App. F. IX-4

1921.

File No. 61-21

Previous References
Legis 20-1910 (1-8)
(Legis)

Serial Nos. 1—6

Later References
Law Dep 40—35
Law 116-37-Nil

1546

General and Revenue Secretariat.

P.167

Serial Nos. Six

Manuscript Part A for August 1923.

SUBJECT

Bill to provide for suits against government.

To

The comptroller Mysore Gazette
No P 818- dated 10th August 1923
ordered the publication of the Act
in the Gazette

Ramaswamy Iyengar
12-1-1923

G.R.S. 11] 1917

GENERAL AND REVENUE SECRETARIAT.

(Courts Legis.)

NOTES.

61-24

File No. ~~49-14~~

FILE HEADING.

~~Suits against Government~~

~~(R.A. Subject 19 & 34 of 1913)~~

Bill to provide for suits against Govt.

From

No.	Dated	Received
Diary No.	Enclos.	Spare Copies.	Serial No.

BRIEF ABSTRACT OF LETTER.

NOTES AND ORDERS.

Returned.

SUBJECT No. 19.

Amendment to Civil Procedure Code.

Mr. C. Krishnamurti, Law Association, Bangalore.

Summary of discussion.—The Civil Procedure Code may be so amended as to prescribe the procedure to be adopted when suits are filed against the Government.

Reply of Government.—Will be considered.

SUBJECT No. 34.

Suits against Government.

Mr. H. Narasinga Rao, Bar Association, Mysore.

Summary of discussion.—Suits against Government may be allowed as is done in some important Native States in India.

Reply of Government.—Noted.

NOTES—First Sheet.

GPB—35,000—15-6-12

LEGISLATION.

(Nos. 1–12.)

SUBJECT No. 1.

Suits against Government.

(a) Messrs. S. R. Balakrishna Rao, K. Shankaranarayana Rao, C. Subba Rao, S. Sitaramaiya and other members of the Shimoga District.
(b) Mr. K. Chandrasekhariah, Bar Association, Mysore.

Summary of discussion.—(*a*) The Civil Procedure Code may be so amended as to make it similar to the law of British India. As it is, the aggrieved party has to take the risk of suing the officer concerned, and if the officer is beyond the reach of the Mysore courts when the decree is passed or even during the trial, the party will be without remedy. As officers are constantly transferred, it is difficult to sue the particular officers concerned and even if a particular officer is sued, on his transfer or retirement, his successor has to be brought on the record. This procedure involves delay and expense. Suits against Government may be allowed as in British India.

(*b*) The Civil Procedure Code may be so amended as to allow suits against Government.

Reply of Government.—Under consideration.

G. R. S. 12]
General and Revenue Secretariat.

Legis File No. 69 of 1914

Serial No.

1 When the Civil Procedure Code now in force was under consideration, the question of including the provisions relating to suits against Govt/s was discussed and the decision was that such provisions were unnecessary;

2 The subject has been repeated this year also. [No. 4-(c) of General Subjects]

Subd for order

AS. 17/9/14

3 This question was raised at the time of introducing the Civil Procedure Code

Legis 20-10-14 No. 6, 7 & 8

The first Member's note is at p. 9 of the Printed Collection (1914 Legis 20-10-14) Suits against Govt. amendments allowed as they cannot be filed against Govt.

Flag J.

4

The provision for suits against Govt was found unnecessary. ~~Now~~ the question as this question has been repeated this year also, it may be better that a definite answer is given ~~Recorded~~

G. Sim 28 15/9

(First Member)

5 Perhaps it is better to give a reply to this effect at the meeting -

H. V. [illegible] 24/9/14 28 15

28/9

NOTE—Contn. sheet.

GPB—55,000—27-4-[illegible].

Extract of Subject No 4 (C) – M.

Amendment of the Code of civil Procedure

(C) Mems A. Krishna Rao, Bar Association, Mysore

(C) The civil Procedure code may be amended by allowing suits against Govt by private parties.

Reply of Govt :– Noted for consideration

Opinion of M^r Chandrasekhara Aiyar where upon was connected with the representation:

"This is a matter for Govt."

"

The Chief Secy :... I have no opinion to offer"

6) Sub^d to orders with a draft as per para 4 of the notes.

Sy. (16) 23/2/1915. Ull

Sy Secretary
Es 28/2

First Member

7) But what is the exact difficulty which the proposers feel? Please bring this up with the Code (proofs marked) for personal discussion. H.V. Nanjundaiya

26/2/15

Es 28/2

F.1.4c-14

2

45

G. R. S. 12]

General and Revenue Secretariat.

Legis
Cls File No. 49 61 of 1914-15

Serial No.

I

5) From reports or otherwise make as comprehensive a list as practicable of cases in which an Offr of Govt (or Govt) has been a Party & note whether the objn that Govt was not to be sued was raised; how far Govt recognised the Agency of the Offr concerned

II

Rev Code ~~Cases~~ recognised suits against Rev Offrs. Are there any other provns similars to this?

9) ~~Do~~ Note all the indemnity Sections in ~~Cr~~ Regns &c?

H. V. Nanjunda Ayya

23/3/15

II

23/3

~~[illegible]~~

NOTE—Contn. sheet.

GPB—25,000—2-11-14

G. R. S. 12]

General and Revenue Secretariat. | Pol & Cs File No. 109 G1 of 1914.

Serial No.

O

P

(1)

A list of all the indemnity Sections in the Regulations and a list of cases to which Govt officers were parties are Submitted herewith.

(2) Under the maxim that the Crown can do no wrong, the Crown in England is exempt from criminal prosecutions and even from civil action in Court. In cases of debt or for damages for breach of contract or for the recovery of real or personal property, the Subject has his remedy by a petition of right. But the agents of the Crown in England cannot claim complete immunity in respect of torts.

(3) In British India, the question has been settled by the provisions of the Govt of India Act 1858 under which a Subject has the same remedies against the Secretary of State in Council as he might have had against the East India Co. if the Govt of India Act, 1858 had not been passed. The difference in the law is due to the fact that the E.I.C. was only an ordinary trading Co. like any other Subject to the Crown, and was exercising certain restricted powers of Sovereignty. On the assumption of Sovereignty by the Crown, it waived its claim to immunity, and preferred to be in the same position in which the E.I.C. was. So the principles of law which govern Suits of this kind in British India have no application to Europe.

NOTE—Contn. sheet.

GPB—70,000—17-12-15

G. R. S. 12]

General and Revenue Secretariat.

Legis

File No. 469 61 of 1914-21

Serial No.

(3) The analogy, if any, should be to the law in England and not to the law in British India. Suits as in England, even here there is nothing in the constitution to prevent individual officers being sued as such for anything done by them in the course of duty, and according to the standing orders of Govt. the damages, if any, awarded will be paid by Govt. out of the public revenues. The subjects remedies are not therefore affected in any way by the present law and procedure, and no change therefore seems necessary. If approved, draft of this effect will be submitted.

[illegible]

Press [illegible] print [illegible]

Second Memo

(4) Yes. We may say "Govt do not consider that any change in the existing law is necessary. Parties have ample facilities for obtaining redress otherwise than by way of a suit instituted against Government as such."

(5) Draft as to London Office

K. Bhandarkar 11/9/16

(6) Draft as above

[illegible] 11/9

(7) Draft submitted

A 13.9.16 N. N.

The word "Secretary of State for India" as explained by the Irish courts is nothing more than words indicating the mode by which the Govt. of India is to be sued and be sued — a mode in which to reach the revenues of India which cannot be reached by suit against an individual officer of Govt. (15 Ch. D. 1, 44 at 256)

2206

11.9.16

NOTE—Contn. sheet.

GPB—70,000—17-12-15

List of cases to which Government Officers were parties.

****

Forest	68 - 13	(1 - 3)	S. R.	135 - 14	(1 - 2)
,,	35 - 13	(1 -10)	,,	27 - 14	(1 - 3)
L. R.	176 - 12	(1 - 4)	,,	53 - 13	(1 - 2)
,,	410 - 12	(3 - 4)	,,	45 - 11	(11-12)
,,	106 - 11	(1 - 2)	,,	22 - 11	(6-12- 15)
,,	240 - 10	(1 - 6)	Courts	94 - 12	(1 - 9)
,,	344 - 09	(1 - 2)	,,	221 - 07	(1 - 4)
,,	113 - 09	(1 - 3)	,,	98 - 06	(1 - 2)
,,	,,	(4 - 5)	,,	67 - 06	(1- 2)
,,	51 - 09	(1 - 2)	,,	292 - 07	(1 - 7)
,,	,,	(3 - 4)	,,	41 - 07	(1 - 6)
,,	302 - 08	(1 - 2)	,,	198 - 05	(1 -11)
,,	318 - 08	(1 - 8)	,,	121 - 04	(10-11)
,,	243 - 08	(1 - 7)	,,	209 - 04	(1 - 2)
,,	169 - 08	(1 - 2)	,,	,,	(3 - 4)
,,	162 - 08	(1 - 2)	,,	121 - 04	(1 - 9)
,,	196 - 07	(1 - 2)	Police	99 - 15	(1 - 2)
,,	108 - 07	(1 - 2)	,,	148 - 12	(1 - 4)
,,	70 - 07	(1 - 2)	Courts	321 - 11	(1 - 2)
,,	35 - 07	(1 - 2)	Police	214 - 10	(1 - 6)
,,	,,	(3 - 4)	Regis.	16 - 09	(1 - 2)
,,	419 - 06	(1 - 2)	Police	44 - 06	(1 - 3)
,,	240 - 06	(1 - 2)	,,	115 - 05	(1 - 2)
,,	45 - 06	(1 - 2)	,,	16 - 04	(1 - 2)
,,	267 - 05	(1 - 2)	Special file No. 590 Sessials 4		
Muzrai	138 - 14	(1 - 2)	J. F.	64 of 1892	
,,	457 - 13	(1 - 2)	L. F.	248 of 1892	
,,	149 - 12	(5 - 8)	J. F.	241 of 1892	
,,	171 - 09	(1-39)	J. F.	216 of 1892	
,,	136 - 11	(1 - 2)	Local Board Branch.	135 of 1892	
Education	27 - 14	(7 and 10)			
,,	207 - 11	(1 - 2)	J. F.	39 of 1896-97	

****

9 #

A statement of indemnity sections in the enactment in force in Mysore.

*****

	Name of Regulation.	Number of sections.
1.	Act V of 1861 (Police Act) Repealed by Police Regulation V of 1908.	Section 22 (6)? 80? Section 81.
2.	Act III of 1877 (Regis.) Repealdd by Registration Regulation I of 1903.	Section 86, 87.
3.	Regulation No. IV of 1888 (- Mysore Land Revenue Code).	Section, 223, 225 and 230.
4.	Regulation I of 1892 (Merchandise Marks Regulation.)	Section 18.
5.	Regulation IV of 1894 (Mysore Railway Regulation).	Section 15 clause (5).
6.	Regulation XI of 1900 (Forest Regulation)	Section 53, 66, 67 and 81.
7.	Regulation V of 1901 (Excise Regulation).	Section 72
8.	Regulation VIII of 1901 (Regulation to amend the ~~xxxxxxxx~~ Indian Evidence Act of 1872).	Section 8.
9.	Regulation II of 1902 (Local Boards Regulation).	Section 37, 38 and 39.
10.	Regulation III of 1903 (City of Mysore Improvement Regulation).	Section 46.
11.	Indian Penal Code.	Section 77,78,79,80,81,87,88,92 93, 94 and 95.
12.	Mysore Tramway Regulation II of 1906.	Sections 40 and 41.
13.	Regulation No. VII of 1906 (Regulation for the better management of Municipal offairs in Mysore)	Sections 2, 38, 16)

14.	Village offices Regulation IV of 1908.	Section 16.
15.	Treasure Trove Regulation III of 1910.	Section 18.
16.	Tank Panchayat Regulation 1 of 1911.	Section 20.
17.	Civil Procedure Code Regulation III of 1911-	Sections 70 (2)? 71? Sections 80, 81, 82, 152 A.
18.	Regulation No. I of 1912 (Regulation for the Protection of Judicial officers.)	
19.	Mysore Factories Regulation III of 1914.	Section 55.

****

CP

DRA 1-15

1/8

G. R. S. 12]

General and Revenue Secretariat.

Legis File No. 61 ~~449~~ of 191~~2~~-22

Serial No.

18) For favour of Dewan's kind approval
G. Srinivasa
13/9

Secy
Dewan

Dwarakanath
14/9

1564
14-9-16

19 Please bring up at a meeting 2
M. Visvesvaraya
17.3.17

Comml -
C.S. 17/3

NOTE—Contn. sheet.

GPB -70,000—17-12-15

(12) 5549-14. (9-12)

2/7

Subject.-Clause xi of the Schedule.

2.1 Question of amending the code of Civil Procedure so as to allow suits being filed against Government.

OPINION OF THE COUNCIL.

2) A copy of the judgment of the Chief Ct. in a recent case (Rupee Land Acq case) may be obt.

2a) the practice in some of the Native States may be ascertained.

3) A note upon the expediency of the proposed measure may be prepared & submitted.

M. Kanakaraja Mrs. (17/7)

12/7/17

23 Draft sub by Srinivasa Iyer.

4) Submitted with two drafts.

Sus A

ASR 17/7

5 done by Srinivasa Iyer

Sl no. 1

To the Resident, Cochin

No D 236 dt 21st July 17

Calls for a copy of the judgment of the Cochin court in the recent Rupee Land Acquisition case brought by Mr. Muthiah Rao against the Dist Judge, Tanjore.

Sl. no. 2

To the H. A. Resident

No Pol 72 dt 21st July 17

Requests to ascertain for the I. the practice obtaining in the Native States.

G. R. S. 12]

General and Revenue Secretariat. | File No. 467 of 1917.-22

Serial No.	
(3)	From the Registrar, Chief Court no. D Dis 79 Dy 31.7.17 Forwards copy of Judgment of the Chief Court in Regular appeal no. 230 of 1915-16 against the decree of the Judge in the Mysore Land Acquisition case. 26 Subd. The Residency reply may be awaited. Asst Sec'y 9/8 Ans dis 9/8 G. Srinivasa Bs 1670
(4)	From, The First A. Resident No 6792 Dy 3.9.1917. Forwards Copy of letter No. 2860/J Dy 28.8.1917 from the H.A. Resident, Hydrabad and States that the replies of the other Durbars will be Communicated when they are received.
(5)	From. The First Asst to Resident No 7667 Dy 13.9.17 Forwards Copy of letter no 2804 Dy 2.9.17 from the ~~First~~ Resident in Travancore and Cochin in Continuation of Serial no 4.
29	Subd for perusal. Replies from Baroda & Indore are due. Asst 18/9 G. Srinivasa Rao 18/9

NOTE—Contn. sheet.

GPB —70,000—17-12-15

1395
1613

14

General and Revenue Secretariat. | Legis- File No. 45 G1 of 1917-22

Serial No.

(6)

first transaction

From the JA Resident

no. 5526 dt 18/12/17

forwards a memorandum prepared by the Asst Legal Remembrancer, Baroda, summarising the provisions of the Baroda Civil Pro Code dealing with Suits against the State & State servants

5

29 Submd - Reply from Indore may be awaited.

Asst 22/12 NK 22/12/17

29 Up

Secy Government

first Asst to Mr.

7

From the J.A. Resident

no. 435 dt 18.1.18

forwards the Indore Rules

30) Submitted with reference to the Opinion of the Council on page 12 of these notes.

31) The Judgment of the Chief Court & the Rules in the marginally noted Native States have been received.

Asst 29/1 NK

E

✓

Hyderabad .. F
Travancore G
Cochin S
Baroda T
Indore. C

NOTE—Contn. sheet.

GPB—6,000—7-6-12.

1613

WD 1233—GPB—60,000—1-12-16—S.

15

G. R. S. III-2

General and Revenue Secretariat.

Legis

~~Ex~~ File No. ~~G~~ 61 of 1921-22

Serial No.	
	1 Please (1) put up 2 typed copies of the statement of indemnity sections referred to in p. 6 of the notes (pp. 1) & of the list of the cases (pp. 1) (2) the Chief Court decision in Murty Rao's case (3) write to Mr. B. N. Rao to return the Book on the subject D. M. 19/8/19
	Subd. Typed copies of the statement of indemnity sections & of cases in which Govt. appeals were pending are put up for Govt.'s judgment please see flag E. 2) Draft to Mr. B. N Rao for the return of Rowlatt's Bills by registered post cover & separately subd. SG 1/9/19
	2. Please put up a draft Bill on the Baroda model with suitable alterations (vide marginal remarks) D. M. 7/1/20

Note:—
The printed (A) collection relating to this cir: p. c. — which is said to be the last copy available — will be carefully preserved
D. M. 9/8

Legis 9/8
to Exam Ist
19/8/19

Please put up the A Collection.
D. M. 4/9

A. collection received from C.O. 16.9.19
D. M.

NOTE—Contn. sheet.

9/1613

WD 1233—GPB—60,000—1-12-16—S. 16

G. R. S. III-2

General and Revenue Secretariat.

Legis File No. 61 of 1921-22

Serial No. 3

Submit. with a draft bill with Statement of Objects & Reasons on the Baroda model as directed.

4 The subject matter exempted from the cognisance of the Court in such cases is provided for in S. 22 of the Land Revenue Code. Hence that clause has not been included in the draft Bill.

Submit for orders.

8/3 S.G. 4/3 A.S.R. 3/3

Please push up as typed copy of the Bill with objects & Reasons. D.M. P. Mamdani

Legis 5/3

3/3 Typed copy is submitted

8/3 S.G. 10/3 A.S.R. 12/3

I [illegible] as proposed, has not been taken up. D.M. 5/1/23

NOTE—Contn. sheet.

G. R. S. III-2.

General and Revenue Secretariat. | File No. 46 61 of 1917

Serial No.

37 Kind reference is invited to the Council decision of 12th July 1917 calling for a note upon the expediency of the proposed measure. No necessity for legislation does not seem to have been definitely decided, though the reply of Govt. to the representation in the R. A. was that materials were being collected for preparing a Bill.

38 This question was raised at the time of the amendment of the Civil Procedure in 1910 & incidentally query was also raised — which has not been answered — whether this is a matter touching H. H.'s prerogative & as such outside the purview of the Legislative Council. (vide query on the note in small types on p. 4 of the A Collection)

39 The Council decision on the 5th April 1910 was that no change in existing law was necessary.

40 Kind reference is also invited to the opinion of Mr. Ko. Chandrasekhara Aiyar the then 2nd Member of Council, recorded p. 7 of the notes: —

"Govt. do not consider that

This does not seem to fall under the proviso to S. 12 of the L. C. Reforms Act.

D. 21. 2.

NOTE—Contn. sheet.

G. R. S. III-2.

General and Revenue Secretariat.

Legis File No. 49 61 of 1922

Serial No.

change in the existing law is necessary. Parties have ample facilities for obtaining redress otherwise than by way of a suit instituted against Govt as such.

47) The law in B. India in this respect is in a peculiar position. There a subject can sue the Secretary of State for India in all those cases in which the East India Company were liable to be sued, and this is a privilege allowed by the Crown on the assumption of sovereignty.

Hence the question does not seem to be free from difficulty. The British Indian model cannot be followed & we may have to look to England for an analogy. In what respects & to what extent suits may be allowed to lie against Govt are matters relating to substantive law, and it is not clear whether it is intended to pass an original enactment on the subject.

In England, suits against Govt are instituted by means of what is known as a 'Petition of Right', which is the

NOTE—Contn. sheet.

G. R. S. III-2.

General and Revenue Secretariat.

Legis File No. 49 61 of 1941.

Serial No.

process by which property of any kind (including money or damages) is recovered from the Crown, whether the basis of the claimant's title be legal or equitable.

Petition of right lies in the following cases: —

(a) To obtain restitution of real or personal property of the subject which has found its way into the hands of the crown, or compensation if restitution cannot be made;

(b) To recover damages for breach of a contract made on behalf of the crown, whether the breach is due to the acts or the omissions of servants of the crown.

Petition of right does not lie —

(1) in respect of engagements in the naval, military, or civil service of the Crown which are as at present made "during pleasure";

(2) nor for breach of public duty, e.g. failure to perform treaty obligations;

(3) nor for trespass or negligence or other torts by Crown servants. Where such acts are wrongful the remedy is by action against the officials as an

G. R. S. III-2.

General and Revenue Secretariat.

File No. 49 61 of 1921-22

Serial No.

individual & sole in his official capacity

4 Since the King can neither do nor authorise a wrong, a Petition of right will not lie for damages for a tort alleged to have been committed either by the Crown or by a servant of the Crown acting by the Crown's authority. On the principle a Petn of right will not lie for the alleged infringement of a patent by the Crown or its servants.

4 5 The procedure is regulated by the Petition of Rights Act 1860 (23 & 24 Vict c. 34) and rules framed thereunder as the 1st Feb 1876. According to these the petition must be left with the Home Secretary for submission to the King, with a view to receiving the fiat of the King thereto. The King may grant or refuse the fiat at his pleasure, and it cannot be said to be absolutely the duty of the Attorney-General to advise the grant of the fiat in every case where the petition discloses a reasonable & probable ground of claim. Until the fiat

G. R. S. III-2.

General and Revenue Secretariat.

Legis
~~Ch~~ File No. 49 61 of 1921-22

Serial No.

has been granted the petition cannot be set down for trial.

46 The claims which can be made by petition of right are more limited in nature than those which can be made in proceedings between subject & subject. The fact that the fiat of the Sovereign has to be obtained renders it necessary that the petition should show clearly on the face of it a claim of such a nature that the Crown's advisers can advise the Sovereign to allow it to proceed. "The proceeding by petition of right exists only for the purpose of reconciling the dignity of the Crown & the rights of the subject, and to protect the latter against any injury arising from the acts of the former; but it is no part of its object to enlarge or alter those rights."

47 We will be seen from the above that the English remedy by petition of right is really very much limited in its scope & hedged in

NOTE—Contn. sheet.

G. R. S. III-2.

General and Revenue Secretariat.

File No. 4961 of 1921

Serial No.

by rules & restrictions. If it is decided to grant a similar remedy in Mysore, it is a point for consideration as to what respect & to what extent the right should be conceded, and whether the permission of H.H. or the Dewan, or the 2nd Member of Govt should be insisted on as a condition precedent to the institution of an Suit (after correspondence) to the King's fiat in England.

(c) Third point is also covered by the ruling of the Chief Court in Murti Rao's case in which they have expressed the opinion that the law does contemplate some suits against the Govt & against the State as the Crown & that the Regulations should provide some procedure for use in those suits. It is a point for consideration whether the Chief Court may not be addressed in the matter & requested to give their opinion whether in the absence of some procedure is prescribed for such suits, are now recognised or whether

G. R. S. III-2.

General and Revenue Secretariat.

Legis. File No. 69 61 of 19 Pt. 1

Serial No.

considered it desirable to pass an original enactment generally allowing suits against Govt.

(4) Copies of the provisions of laws existing in Jaipur, Baroda, Travancore, Cochin & Hyderabad have been obtained & are up. It will be seen therefrom that it is only in Hyderabad State an original enactment has been passed providing for the appointment of a Special Committee, &c, if considered necessary by the Prime Minister who is empowered either to grant or refuse permission for the institution of suits against Govt.

(5) A memorandum prepared by the Asst: Legal Remembrancer, Baroda has been received which contains a summary of the provisions of Part II, Chap: 44 of the Baroda Civil Proc: Code, and also provides for the establishment of Special Courts for trying suits against Govt.

NOTE—Contn. sheet.

J. R. S. III-2]

General and Revenue Secretariat. | File No. 49/61 of 1961

Serial No.

1 The matter being very important, it seems desirable to circulate the opinion of the Judges of the Chief Court before further action is taken.

Submitted for orders.

P. Mahadevan D.S. 28/9

Chief Secy
III Member

2 Before consulting the Chief Court it seems to be desirable for Govt. to indicate the main lines of the proposed legislation as for instance - whether all kinds of suits are to be allowed or only a restricted remedy is to be provided; whether any preliminary application to Govt. & sanction of any authority is necessary or whether mere notice of suit is enough & so on. When these points are indicated a kind of draft bill may be prepared & opinion ~~of~~ of the Chief Court, Govt advocate &c invited thereon.

3 So far as I can see it seems best to have a separate regulation for the purpose rather than to amend the Civil Pro. Code. It is desirable also to have a procedure based on

NOTE—Contn. sheet.

R. S. III-2]

General and Revenue . Secretariat. | Legis Br File No. 44/61 of 1961

Serial No.

The English analogy - which Hyderabad appears to have followed - through the actual trial of suits allowed to be filed may take place in the ordinary courts.

It is desirable to define the classes of suits that may be allowed, either positively or negatively

C. S. Bajpai

3rd Memory

2333
5-10-20

4/Co

People will not be satisfied with a half measure that would proposed by the Civil Secretary. What they want is complete freedom to sue Govt for any illegal act that they may do in the pursuit of the approved policy. Laws can indeed and to test the validity of Govt acts in a Court of Law and to prevent Govt from by an injunction from taking action under them. It is impossible to give them such right unless there is provision made and machinery created for appeals from the decisions of the Civil Courts. In if such wide powers in pursuance of constitutional con-

NOTE—Contn. sheet.

Serial No.

of vital importance to the State which cannot be lightly [illegible] decision of this Court ultimately prejudicial. In British India provision for appeal to Privy Council from the decisions of the High Courts in certain cases and the judgments of the Privy Council in many many cases show that the High Courts in British India though presided over by eminent persons are not infallible. It is impossible to recommend the establishment of a Supreme Court of Appeal in Mysore if the recommendation is that it should be the ultimate Court in all such cases in which a substantial right will lie in England. A bill of such cases may be made and cases may be taken out that kind of suits in which the validity of the order of the Court can be questioned and exclude from the cognizance of the Civil Courts. But this is done I do not think that it is necessary to make provision for the High Court being made the Court of Appeal in all cases

Serial No.

56 Ku pertains matters may appear to be followed before Court in accordance with the usual practice of Criminal Courts in Ireland

Mr [illegible] 11/10

57 Please put up a Standard work on "Bill of Rights" if available

D. M. 14/10

P. [illegible]

58 Book III of Civil Proceedings by and against the Crown by George Stuart Robertson deals with Petition of R. One book is herewith put up & dated.

BM 23/10.

R. S. III-2]

General and Revenue Secretariat. | Legis File No. 61 of 1924.

Serial No.

59) Kind reference is invited to the ~~circular~~ orders of the 3rd Member ~~Dated 21st March 1924~~ in para 60 above suggesting the institution of a suit against Government in all such cases in which a Petition of Right will lie in England and calling for a list of such cases.

Definition. 60 :- A petition of Right is the process by which ------ recovery is made from the Crown of property of any -- kind, including money, to which the suppliant is ------ legally or equitably entitled, except in cases where - this process is ousted by some Statutory method of -- recovery.

→ Civil Proceedings by and against the crown by G.S.Robertson. P.331.

A simpler definition is that given by Walter Clode in his Book on " Petition of Right" which is as ----- follows:-

A Petition of Right is a petition presented by a - subject to the Crown stating some infringement of the suppliant's legal rights by the crown or its officers and praying redress therefor.

Note:-

The person presenting the petition is usually - called the "Suppliant", and the answer given by the -- crown "the endorsement" or "fiat".

2 The remedy by Petition of Right arises only --- where the rights of the crown are directly in ------- question, for, where they are only incidentally concer

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	concerned in an action, the Attorney-General may be made a defendant as representing the crown.
69	The cases in which a Petition of Right is available are:-
(1)	Where the land or goods or money of a subject have found their way into the possession of the crown, and the purpose of the petition is to obtain restitution, or, if restitution cannot be given, compensation in money;
(2)	Where a claim arises out of a contract, as for goods supplied to the crown or to the public service
(3)	To compel payment of annuities granted by the crown;
(4)	For a pension out of the Civil List, at the suit of an assignee;
(5)	For a mere money claim;
(6)	For the return of overpaid probate duty;
(7)	For a rent-charge;
(8)	To recover hereditaments;
(9)	To enforce an agreement for a lease granted by the crown;
(10)	For a declaration of what is due under a contract with the British Admiralty contained in letters;
(11)	For breach of contract, even though resulting in unliquidated damages;
(12)	To recover money claimed either by way of debt or by way of damages on breach of contract;

Whether

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(13) Whether the breach of contract complained of be ----- occasioned by the acts or by the omissions of the -- crown officials, or arise otherwise in respect of ---- matters of contract;

Note:-

(a) In a Petition of Right case compensation was claimed and awarded against the postmaster-general, -- under Section 7 of the Telegraph Act, 1863, for damage caused in the course of the laying down of certain -- telephone wires.

St. James and Pall Mall Electric Light Co., Ltd., Vs R., (1904) 73, L.J.K.B.518.

(b) In another case of Petition of Right the ---- suppliants recovered damages from the crown for breac of contract caused by the refusal of the Admiralty to accept the whole of two millions of stone which the - suppliants were bound by their contract to deliver -- "as required" for the construction of Portland New --- Breakwater.

Stewards and Co., Ltd., VS. The Queen (19 16.T.L.R.153.

Encyclopedia of the Laws of England (2nd ---- Edition) Vol.XI, pages 97&98.

Other instances given by Clode.

According to Clode a Petition of Right is --- available in the following cases also:-

(14) Corodies.

Note:-

A corody is an allowance in money or food ---- payable by religious houses to the king their found for

NOTE—Contn. sheet.

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for the sustenance or his servants. This was success--fully discharged after suit by Petition of Right to the crown.

(15) Advowsons.

(16) Seigniories.

(17) Gales.

Note:-

A Gale is a grant from the crown in fee simple, subject to certain conditions, of tracts of ---- coal or iron ore or stone lying under the forest pay--ing only a royalty therefor.

(18) As regards the question whether in the ---- case of a specific chattel lost or destroyed, its ----- value in money may be recovered, the following dicta are held to be in favour of the subject's recovering the value:-

(1) The court of common Pleas have decided --- that a Judgment in favour of the suppliant upon ------ petition of right "enabled him to recover possession of specific property, or the value thereof, if it had been converted to the kings' use."

Tobin. VS. Reg. 16 C.B.(N.S.) 310, at page 358.

(2) The court of Queen's Bench repeated this --- opinion

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Opinion with additions when, in summing up the cases in which the remedy by petition was available, they -- included those in which the purpose of the petitioner is to obtain "compensation in money" if restitution (in specie) cannot be given.

Feather VS. Reg. C.B.&S.2

(19) Money paid to the crown under a mistake.

(20) Mesne profits;

(21) Salary.

Petition of Right by Clode,

pages 73-95.

Petition of Right in equity.

(22) 4 Since the passing of the Petition of Right -- Act, 1860, several petitions of right have been ------- presented claiming relief against the crown upon ---- equitable grounds.

(23) 5 Again, under the Petition of Right Act, a ---- petition of right may be instituted in the Probate, -- Divorce, and [redacted]

Admiralty

NOTE—Contn. sheet.

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Admiralty Division, in case the subject-matter of the petition or any material part thereof arises out of the exercise of any belligerent right on behalf of the crown, or would be cognizable in a Prize court if the same were a matter in dispute between private persons.

(24) (b) Lastly, by 40&41 Victoria C.59.S.20, a petition may be brought by any person claiming to be interested in any colonial stock or dividend thereon to which that Act applies.

(b?) It may perhaps be useful to add the classes of cases in which a Petition of Right will not be available. The following is a list of cases in which a Petition of Right will not lie:-

(1) Where a petition of right does not disclose some legal right capable of being enforced against the king in some municipal court;

(2) In respect of a claim founded upon tort;

(3) Nor for compensation for a wrongful act done by a servant of the crown in the supposed performance of his duty;

(4) Nor against the succeeding sovereign for injuries sustained in the preceding reign;

(5) Nor to obtain payment of a debt due to a British subject from the subject of a foreign Government out of a sum of money received by the British Government from the foreign Government on account of debts due from its subjects to British subjects;

(6) Nor to recover from the crown, out of a fund paid

NOTE—Contn. sheet.

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paid under a treaty with a foreign power, as compensat-ion for debts due to British subjects, the payment --- of an amount claimed in respect of one of such debts;

(7) Nor where the claim was for compensation on --- being compulsorily retired upon half pay from a civil or military office alleged to be permanent;

(8) Nor for an increase of a superannuation ----- allowance;

(9) Nor for damages for an infringement of a ---- patent right;

(10) Nor for repayment of income-tax;

(11) Nor for debts due from an Indian reigning --- prince before the annexation of his province by the - East India Co.,;

(12) Nor, in respect of financial liabilities ----- incurred by a conquered state before the outbreak of the war resulting in its conquest;

(13) Nor for payment, to the persons entitled, of --- booty granted by the crown to the Secretary of State for India, in trust for the officers and even of ----- certain forces, and to be distributed according to --- certain scales and proportions;

(14) Nor for lands in a colony which have been --- vested in the crown by an Act of the provincial ----- legislature.

Encyclopedia of the Laws of England,

Vol.XI, pages 98-99.

~~Next as to the liability of the crown in --- respect of wrongs:-~~

NOTE—Contn. sheet.

Neither

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Next as to the liability of the Crown in respect of wrongs:

Neither an action nor a Petition of Right lies against the crown for a wrong committed by its servants.

The remedy open to a person injured by a servan of the crown in the course of his service is an action against the person who has actually done or taken part in doing the wrongful act which has caused damage.

But, speaking generally, no injustice results from this, for the crown, i.e. the Government usually pays damages awarded against a servant of the state for a wrong done in the course of his service. Actions for instance, have been constantly brought against Officers of Royal Navy for damage done by collisions with other ships caused by the negligence of such officers. The damage recovered against the officer is almost invariably paid by the Admiralty.

It would be an amendment of the law to enact that a Petition of Right should lie against the crown for torts committed by the servants of the crown in the course of their service. But the technical immunity of the crown in respect of torts is not a subject of public complaint, and in practice works little, if any, injustice.

It should be further remembered that much business which in foreign countries is carried on by persons who are servants of the state is in England transacted by corporate bodies, Eg, railway companies,-

NOTE—Contn. sheet.

municipal

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municipal corporations, and the like, which are legally fully responsible for the contracts made on their behalf or wrongs committed by their officials or servants in the course of their service.)

Vide, Lowell's "Government of England" Vol: ii, pages 490-494.

Other European countries.

3 In view of the importance of the subject, it may perhaps be interesting to state the law prevailing in the other European countries. On the continent the rule is that the Government is liable to be sued by an individual in contract and also in tort, where the tortious act is not committed in the performance of functions of a distinctly public legal character and where the fault of the officer causing it is not purely personal to himself but consists rather in bad service, in an order badly given, not understood, or imprudently or carelessly executed. Thus the Government would not be held responsible for damages caused by its agents in the collection of taxes while it would be in a ship were injured by the negligence or the officers of one of its men-of-war. An example of the purely personal act of one of its agents for which the Government would not be responsible would be found in the case of theft by him. While the general rule as to the responsibility of the Government for its contracts and torts is the same in France and Germany, the courts before which such suits should be brought are

different

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France.

different. In France while the common law rule in the absence of statute would appear to be that the ordinary civil courts have jurisdiction, so many special statutes have, as a matter of fact, been passed giving the jurisdiction to the administrative courts that it is laid down as the rule that the administrative courts are alone competent to declare the Government a debtor. In Germany, however, it is the ordinary courts which have jurisdiction of actions both in contract and tort against the Government. The German rule as to the court which has jurisdiction of these cases against the Government is considered to be by far the more logical, since the whole responsibility of the Government is based upon the theory of its juristic personality, and of its capacity to enter into private legal relations of all sorts and the consequent possibility of its being held responsible before those courts which have in their hands the application of the private law. The reason for the adoption of the French rule is largely historical and is to be found in the great desire at the time of the revolution to free the administration from the control of the ordinary courts, which had shown themselves too anxious to protect vested rights and hamper the administration in the carrying on of the necessary reforms. In both France and Germany the general rules as to the responsibility of the Government before the courts are sometimes modified by special statutes. Thus in

Germany.

NOTE—Contn. sheet.

France

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France the responsibility of the Government for ---- damages resulting from the carelessness of the agent or the postal and telegraph service is very much --- limited and the action is to be brought before the ordinary courts.In Prussia the Government is made -- responsible for the negligence of its registrars of deeds and mortgages,notwithstanding the fact that th registration of land titles is evidently a public -- legal rather than a corporate or private legal act.

As to the responsibility of officers o Government:-

"In England the idea of legal equality,or of the universal subjection of all classes to one law - administered by the ordinary courts,has been pushed to its utmost limit,Every official ,from the Prime minister down to a constable or a collector of taxes is under the same responsibility for every act done without legal justification as any other citizen.The Reports abound with cases in which officials have been brought before the courts,and made,in their personal capacity,liable to punishment,or to the payment of damages,for acts done in their official character bu in excess of their lawful authority.A colonial ------ Governor,a secretary of state,a military officer,and all subordinates,though carrying out the commands of their official superiors,are as responsible for any act which the law does not authorise as is any ------ private and unofficial person "

Prof.Decey's " Law of the Constituti page,189.

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This

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15 This is the most recent statement of the law - made by a writer of great authority and reputation. It constitutes the fundamental rule of English law and - has the merit of enforcing a far more strict adherence to law than is possible within the limits of any ---- other system.

16 It will be seen from the above that the courts exercise an enormous power over the acts of the ----- administration. Because, any act of any officer may --- give rise to a complaint which the courts have to --- decide. Prof: Goodnow, however, points out that in decid- -ing these complaints the courts delimit the sphere - or administrative competence in all its details in --- that they settle what is the jurisdiction of all ---- officers of the Government. What the actual extent of this control shall be, depends, however, upon the ------ attitude of the courts. They may pass upon every act - of every officer or they may limit their power by --- their decisions in the interest of an efficient ----- administration, may leave something to administrative discretion which they will not attempt to control. --- This has been the tendency of their decisions both in England and the United States. In both countries they have in the first place made it practically impossible to sue in damages the most important officers of ---- state, i.e. the heads of executive departments in both countries and in the United States, also the President and the Governors. Mr. Todd says (Parliamentary Govern- -ment, Vol. I, pages 494&495):-

NOTE—Contn. sheet.

"It

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"It may be stated as a general principle, that in assuming on behalf of the crown a personal ---------- responsibility for all acts of the Government, ------- ministers are privileged to share, with the crown, in a personal immunity from vexatious proceedings by ----- ordinary process of law, for alleged acts of oppress--ion, or illegality in the discharge of their -------- official acts..... .....Whether the alleged liability arises - out of contract or out of tort, or from any matter of private individual complaint against a minister of -- the crown, for acts done in his official capacity, the ordinary tribunals of justice will afford him special immunity and protection."

77 This does not mean that in no possible case -- can a suit be brought against a minister, but only tha the courts are very careful not to extend their ----- control so as to hamper the administration of public business by the ministers.

78 In the United States the rule is practically - the same.

79 A second limitation which the courts have ---- placed upon their control over the action of the ---- administration, through their power to delimit its --- sphere of competence, is to be found in the rule, that purely ministerial officers will not be held -------- responsible for damages where they have followed ---- instructions which are legal on their face and ------ contain nothing which will apprise the subordinate -- that

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that they have been issued illegally, and are not with-in the jurisdiction of the superior who issued them. The weight of authority seems to be further in favour of the rule that a ministerial officer is relieved -- for the execution of order fair on their faces, even if he is satisfied that there are illegalities lying back of them. The English law has gone further than -- the law of the United States and has offered to ----- officers, who are not ministerial in character, quite a large immunity from suits at the hands of --------- individuals by making their defence very much easier.

Lastly, Classification of officers into Judicial, -------- Legislative, Executive and Administrative:-

The responsibility of officers for damages before the courts is in neither the English nor the American law confined to the cases in which they have acted -- out of their jurisdiction. In many cases officers may be held responsible for damages arising from the non-performance or negligent performance of duties with-in their jurisdiction, or from bad faith. Here the -- courts have been guided in their formulation of the rules of their control over officers, by the character both of the officer and of the duties which he has to perform and which the court undertakes to control. --- Officers are for this purpose divided by the courts into judicial, legislative, and executive officers. In addition to these three classes of officers there is a fourth class of officers whose development has -- taken place during this century and whose duties --

partake

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partake of the characteristics of those of the three -
other classes of officers. These officers are called --
administrative officers. Such are the American --------
Supervisor and county commissioner and the English --
county councillor. Of these various classes of officers
it may be said, in the first place, that purely judicial
officers, i.e. officers that hold courts and decide ----
cases of criminal and private law, and legislative ----
officers will not be held civilly responsible for ----
damages; no matter how gross their negligence may be, --
nor what may be the character of the act giving rise -
to the damages, provided it is within their jurisdicti
The responsibility of executive and administrative --
officers depends, however, largely on the character of
the act which has caused the damage. If the duty, in th
performance of which the act causing the damage was --
done, is discretionary in character, the general rule is
that executive and administrative officers may not be
made responsible since the courts do not like to -----
interfere with the discretion of the administration. --
When, however, the duty is purely ministerial such -----
officers may be held responsible by the courts for ---
their negligence or mal-performance of such duty.

Vide Comparative Administrative Law
By Prof: Goodnow,
pages 161-168.

In case it is decided to allow suits against ----
Government and frame an enactment in this respect, the
following

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following questions seem to deserve consideration and orders:-

(i) Is the right to be open to those who are not the subjects of His Highness?

(ii) Can a person residing out of Mysore be permitted to sue?

(iii) Is the suit to abate on the death of the plaintiff?

(iv) What procedure should be followed upon the death of one of two joint plaintiffs?

(v) Is the right of suit assignable?

(vi) What is to be the period of limitation within which a suit has to be filed?

The following powers may perhaps be taken in the enactment to be framed:-

(a) Power to change the court, if necessary, in which the suit will be prosecuted;

(b) Power to extend the practice and course of procedure in suits between subject and subject, to suits against Government, so far as applicable;

(c) Power to be reserved to Government to make rules and regulations.

Vide Sections IV, VII & XV of the Petition of Rights Act, 1860.

Submitted for orders.

Mahadevappa

Receipt up/my notice also, as given by the RA-Section

3rd Member)

NOTE—Contn. sheet.

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...its against Govt.

...s of the Chief Court.

I ...l. II.

...l. 277.

...l.App. 48
...l. 189
...l. etc.
...l. 781
...l. 797 etc.

~~(1) This ought to be done, we think.~~

(3) It is an attribute of sovereignty, and an universal law that a State cannot be sued in its own courts without its consent. In British India, the case is different. The St. 21 and 22 Vict. C. 106 which transferred to the Crown the possession and Government of British territories in India, expressly provided for a continuance of the liabilities with which the revenues of India in the Companies' hand were chargeable. The Secretary of State can be used in respect of matters on which the East India Company could be ~~MER~~ sued, and even then not in respect of acts of State or acts of Sovereignty done by the Company.

(4) The case here is different. In respect of matters, where a right of suit by an individual is indicated as in certain sections of the Land Revenue Code in force in Mysore, some procedure may have to be laid down. On other matters, it is the pleasure of His Highness and the Government. It may involve passing of other provisions regarding indemnity for public acts done bona fide by a public servant.

(5) Several States in India have recognised this right, e.g., Hyderabad, Baroda, Travancore, Cochin and Indore. In the last three States, the Civil

NOTE—Contn. sheet.

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Procedure Code lays down the procedure and Civil Courts have cognizance. There does not appear to be any restriction regarding the class of suits to be so tried or regarding any permission to be obtained before suing. In Baroda, certain classes of cases a exempted and right of suit regarding others is allowed. In Hyderabad there is a Special Act relating to such suits, which require previous sanction of the Minister or the Nizam, and which are triable only in a Special Tribunal.

In England a restricted right of suit is allowed by what is known as a 'Petition of Right' Previous permission known as 'Fiat' is necessary and is granted only in a limited class of cases. In the United States of America, there is a special 'Court of Claims', requiring permission before hand. France also has a Special Court, while in Germany, ordinary Civil Courts have jurisdiction. In all places, however, the right of suit is restricted.

In Mysore, we have passed the stage when the remedy as now provided, regarding suit against Public Servants-afforded a sufficient remedy to a wronged individual. Government as a corporate body is now entering into contractual relations and is running Railways and other business concerns. At present there appears to be no remedy open to parties contracting with the Government or complaining of a

NOTE—Contn. sheet.

Breach of Contract or for damages in suitable cases.

94 It may be necessary to detail, as in Baroda, the classes of cases, in which a suit is allowed or those in which no action will be entertained. The better method will be to pass a Regulation as in Hyderabad, regarding the substantive portion, and amending the Civil Procedure Code, regarding the procedure to be adopted e.g., record of appearances, service of summons, mode of execution etc. Or, the Regulation may itself contain all these provisions. If the class of cases is restricted, no necessity will arise for previous permission, which is an alternative, in case, it is deemed difficult to classify the cases. A Special Tribunal is desirable as questions may arise, which it may not be advisable to leave to ordinary courts to decide.

Right may perhaps be given in the following cases, subject to any remedies already existing:--

(1). Contracts express or implied.

(2) Breach of Contracts and Damages.

(3) Mixed contracts and torts where it is doubtful under which category a case falls.

(4) Very restricted in certain cases of torts, though it is against the general principle adopted in other countries viz., dam-

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for injuries, in Railways run by Government. This is allowed elsewhere also.

(5) Claims founded upon the constitution or any law in force.

(6) Any departmental cases, after the party has exhausted all departmental remedies.

90 Due provision will have to be made for indemnity for acts done by Judicial officers, and also executive officers, when done as such officers.

91 Reservation by Government of Power to frame rules, etc., is also necessary.

---

92 Opinion of the member to prepare a list of cases, where right of Suit may lie & where it may not

Cag

93 Draft list prepared. After discussion with the Govt Secy, was instructed to put it in the form of a bill, and to submit it.

C Ah... Cag

G[redacted] S. III-2)

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94 A bill is prepared as directed, embodying the substantive law only. Regarding the procedure to be adopted, it is more appropriate to amend the Civil Procedure Code, as Part IV already deals with the subject. It does not appear advisable to include the procedure also in the bill itself. Hence, another bill amending the Civil Procedure Code is also put up

(Gen Secy) C Div Cag 15/7/22

95 A revised draft is put up, according to instructions

(Gen Secy) C Div Cag 20/7/22

96) Several alternatives are suggested by the Secy & are marked — Please prepare a clean copy

C Div Cag 21/7/22

97) a revised copy is submitted

Gen Secy Cag 22/7/22

98 Drafts of two Bills — one providing for suits ag[ainst] Govt and the other for Consequential Changes

NOTE—Contn. sheet.

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An the C.P.C. are subd for Consideration
The form has been drafted alternatively
that is one giving a positive Enumeration
of the Causes of action on which a
Suit against Govt can be founded
and the other defining negatively
Cases when ~~that~~ such Suit will not lie. I
1/1184 25/2/22 am personally in favour of the latter
procedure.

99 Perhaps it may be advantageous
to consult the Govt Advocate

S. H. J. 28/2

3rd Member 28/2

(100) Yes. The first draft is more
to be preferred. He may be asked to peruse
the drafts and revise them if necessary

Mir Hamaya 28/2

21/2

H.O. No. 24 D. 28th Feby 22

(101) Forwarded with Compliments to the Govt Advocate for favour of opinion.

Shamsuddin 28/2

28/2

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Secl. O. No. 1 Secretariat
11. 5. 1944
1 MAY 1944
62733

107 At present there is no provision of law in Mysore which enables a subject of the State to file suits against Government. If there is a cause of action against Government, the aggrieved party has to file a suit only against the Officer directly concerned and though in cases where the Officer is sued in his official capacity, it is usual for the Government to undertake the defence, it is yet a purely optional matter.

It is a well recognised principle that a State cannot be sued in its own courts except with its consent and this consent can be expressed only by a specific enactment permitting or conceding such a right.

108 There are certain Regulations which provide for suits against Government in some cases but there is no provision of a general nature recognizing such a right.

109 In England this right is exercised by means of what is known as a Petition of Right under 23 & 24 Victoria, Chapter 34 and a very elaborate procedure is laid down under that enactment. This procedure cannot be adopted in our State as our system of Judicial adminstration is altogether different and the machinery available therefor is also very limited.

Nor can we adopt the system obtaining in British India as there the Government has practically stepped into the shoes of the East India Company and all such suits as could have been maintained against that Company can now be maintained against the Secretary of State for India as provided in Section 65 of 2

and

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and 22 Victoria, Chapter 106. The scope there is therefore naturally much larger than can be conceded here, the position in our State being much the same as in England. But at the same time, in view of the fact that the laws in force here are usually modelled on the lines of those in force in British India, the rights conceded or granted here must be as far as possible like those enjoyed by the people in British India.

(b) A begining may therefore be made here by granting the subjects a right of suit in certain obvious cases embodying for the present in the proposed enactment a list of cases in which suits could be instituted, reserving to Government the right to add to or subtract from that list - in the light of the experience that may be gained by the actual working of the system.

(c) Of the 2 alternative drafts now proposed, I am in favour of the one defining affirmatively those cases in which a right of suit is recognised or conceded, rather than of the other conceding the right generally - but excluding certain classes of cases in which suits shall not lie, as the latter course is likely to give rise to a lot of speculative litigation, leading to very much loss of public time and of money to both the subjects and the Government.

The circumstance that the right will for the present be limited to only a few cases - need not necessarily lead to any apprehension, because, it is always open to Government, even as the Law stands at present,

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present, to undertake the defence in suits filed against its officers and to pay the amounts decreed against such officers where the Government feels it just and necessary to do so.

Alternative Draft (No.2).

"A Bill to provide for suits against Government."

Instead of the present Clause (c) to sub - section (1) of Section (2) I would propose:-

"Claims in contracts express or implied, including damages for breach of Contract".

(i) This will make the provision more general and comprehensive, besides covering all the cases now proposed under Sub Clauses (i), (ii) and (iii).

(ii) I would also propose the omission of Clause (d) as it is very indefinite. Further, once the word "torts" is put in, it will lead to endless complications, as a cause of action based purely on tort can easily be twisted into one of mixed contract and tort. It has also to be ~~encum~~ remembered that a claim in tort is not recognized even in British India, unless the cause of action arises in consequence of any act done under the orders of Government or subsequently ratified by Government.

Draft No.1.

"A Bill to provide for suits against Government".

Clauses (b) and (g) of sub -section (1) of - Section 3, may be omitted. The former is superfluous, besides being vague and indefinite. In several cases whether

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whether a claim is tenable in law or equity at all may not be very clear at the outset and this question will have to be decided by the Court as one of the main - issues in the case.

112 As regards the latter clause, one has to - admit that questions relating to the validity of - orders of Government do arise in several cases - at least incidentally and such questions will have to be gone into and decided. If it is intended to exclude suits brought merely for a declaration that an order is illegal - without any consequential relief - then - it is quite open to the Court to decline to grant such relief under Section of the Specific Relief Act. I do not, therefore, consider that it would be expedient or fair to exclude such a right.

"Bill further to amend the Civil Procedure Code".

"In Section 3, under "79 A", the word "Shall" may be substituted for the word "Can", and the word "Territorial" may be omitted. The place of suing has to be determined with reference to the provisions of Sections 16-17-18 of the Code and the use of the word "Territorial" is likely to create a little confusion.

113 79 B, appears to be unnecessary. Rule 1 of order 27 if suitably modified, so as to bring it in conformity with the British Indian Code, will quite secure this object, as in every case some officer will have to be generally or specially appointed to act on behalf of Government, having regard to the peculiar circumstances of the case.

114 The Government Advocate or such other legal advisor

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5.

legal advisor as may be engaged by the Government will of course have to appear on behalf of Government; but he cannot sign and verify plaints or written - statements as this will have to be done by officers of the particular departments - concerned who may - have a special knowledge of the facts and circum - stances of the case in question. Provision for both purposes already exists to some extent in Order 27 - Rules 1 and 2, which, if suitably amended so as to bring them in conformity with the corresponding - provisions of the British Indian Code, will quite - serve the purpose. There is also likely to be some overlapping ~~also~~ if "79-A" is added.

(iv) Instead of Section 4(2), we might perhaps substitute - 4 (2). For the words "been delivered to him" in the same Section - the following words shall be substituted, namely:-

"been, in the case of Government, delivered to, or left at the Office of the Chief Secretary to Government, and, in the case of a Public Officer, delivered to him".

(v) This form will bring in the commas at the appropriate places and make the form much more simple.

(vi) "80-A" may also be omitted and the correspond - ing provision in force in British India, Viz. Order 27 Rule 5 may be retained instead, of course with conse - quential amendments.

(vii) Order 27 of the Code will also have to be - amended - both with respect to the heading and the - rules therein. Our present Rules 1 and 3 will have to be

NOTE—Contn. sheet.

Serial No.

to be amended by adding words such as "or against" "or written statement" - "or defendant" Etc. at and by inserting the words "the Government" for "the - Secretary of State for India in Council" at the - appropriate places.

119 In our Code Rules 4, 5 and 6 of Order 27 - which exist in the British Code are omitted because, when our Code was introduced, there was no right of suit against the Government. Now, therefore, those rules also will have to be introduced in Order 27 with the usual modifications.

120 These amendments and additions will obviate the necessity for introducing the proposed new - - Sections "79-B" and "80-A".

121 In my opinion the amendment of Order 27 with the addition of the Rules now omitted - would be more appropriate than the introduction of new Sections to the Code.

Government Advocate
11/5/22.

122 Please put up a typed copy of this as revised and appd by the Govt. Early. Also a note of the Amendments suggested by him.

S.P.V.S. 17.5

NOTE—Contn. sheet.

G. R. S. III-2]

General and Revenue Secretariat.

Legislative File No. 69 of 1914

Serial No.

(1) 123

Send. with typed copies of the Bills as revised by the Govt. Advocate.

Secy 18/5/15

12th The amendments proposed by the Govt. Advocate in Order XXVII are not shown here, because, they need not be placed before the Legislative Council. The necessary alterations & additions will be made & issued by a notification.

Subject to the Govt Secy 2nd members. Advocate's Secy 22/5

5833/2815

125

Draft 2 may be adopted - Section 2 (11) (a) In section 2 (xxii) for words & figures "2 (xxii)" Rivers Act two words - I would like to know what class of cases are intended to be brought under this Clause -

12b Section 79. (a) the section as it stands now will lead to difficulties - Supposing the subject matter valued less than Rs 1000 is within the jurisdiction of the Munsiff or sub Judge, could it be said that it is a suit over which the District Judge has jurisdiction. I would like

NOTE—Contn. sheet.

G. R. S. III-2]

8 7

General and Revenue Secretariat.

File No. 61 of 19 24

Serial No.

Where a cheque similar to cheque No. 229 of the New Code.

127 I wish that to discuss the bill with Mr. Ramachandra Rao. Please ask him to meet me in my Chambers on Saturday at about 11.30 A.M. & I shall be much obliged if the Legal Secretary and the Secretary to Law also present.

128 Please send a copy of the above draft bill to Mr. Ramachandra Rao for favour of his perusal & suggestions and early date.

Rao 25/5

129 Please see Regulation II of 1892 & a suit against the Government of Madras - Expressing that Government is competent to enter into a suit for the repeal of the Regulation enacted by the Legislature & the Govt. of Madras to Madras under the proposed bill. It is not, the bill will not give the cheque which prefers.

Rao 25/5

130 Please write to Mr. Shankaranarayana Rao. Please prepare a copy of the bill & address it to Mr. M. Ramachandra Rao as required

Civil Case 25/5

NOTE—Contn. sheet.

G. R S. III-2]

General and Revenue Secretariat.

Judl. File No. 61 of 19 21

Serial No.

10466/13/9

131 A copy of the Rules has been made.

Submitted with a draft open letter to Mr. Ramachandrak

S.J.

9/5/22

J.K.S.

10/5/22

132) Issue.

Copy C.N.

10/5

A draft is submitted for approval in Cuddapah in the first instance

133) The draft has been revised in the Cuddapah with the first instance

for final sanction.

134) Please submit the draft as amended with the suggestions to Council with the approval.

13/9

DEWAN'S OFFICE

Rd. on SEP 13 1922

Reg. No. 1778

Dewan

13/9

13/9/22

135) Maybe the head of the Cuddapah agency may be informed accordingly.

AR 14/9

To The Chief Secy

with compliments 14.9.22

NOTE—Contn. sheet

Final Note by the Second Member of Council. 69

Subject :—

BILLS TO PROVIDE FOR SUITS AGAINST GOVERNMENT.

136 There is now no provision of law under which a subject of the State can file a suit against the Government for any relief for which a suit would ordinarily lie against a private person, except in cases explicitly provided for in some of the Regulations such as the Land Revenue Code and Land Acquisition Regulation. If there is a cause of action against Government, the aggrieved party has, under the present Civil Procedure Code, to file a suit against the individual Officer concerned in respect of an act purporting to be done by such officer in his official capacity. In such cases Government usually undertake the defence and the damages if any awarded are paid from public revenues. But it is not obligatory upon the Government to do so. The aggrieved party has thus no certainty of obtaining relief in the due course of law and representations have therefore been frequently made both in the Representative Assembly and in the Legislative Council for the recognition of the right to sue the Government directly. A Resolution was also moved on the subject in the Legislative Council and it was unanimously supported by the non-official members.

In British India a subject has all the remedies against the Secretary of State in Council which were open to him against the East India Company before the Government of India was taken over by the Crown. In England though theoretically a subject has no right to sue the Crown yet it is allowed indirectly by way of petition of right.

The principle underlying this Bill is that while the State is not suable in its own courts in respect of the administrative acts of

Government, the immunity should not extend to other activities which are not peculiarly the function of the State. The activities of Government have considerably expanded in recent years and the Governm have been running even commercial concerns, which bring them into business relationship with private persons. The question was also pointedly raised both in the public press and by enquiries addressed to Government as to what means were open to the subscribers to the public loans recently raised by Government to enforce the terms of .. loans.

(7) After a careful consideration of the matter it is considered expedient to concede the right of suit against Government for certai specified reliefs. Two Bills - one for amending the Code of Civil Procedure and another defining the classes of cases in which such suits might be instituted-have been prepared and are herewith submitt I may add that the reliefs for which the institution of suits against Government is proposed to be allowed are selected from the list of cases in which suits against the Crown are permitted in England.

(8) The Bills have been passed by the Dewan and the other Members of Council and may be graciously approved.

~~Camp Mysore,~~
29th September 1922.

MEMBER OF COUNCIL.

Submitted to His Highness.

(161) *I submit herewith a Final Note by the* SECOND *Member of Council on the subject of* BILLS TO PROVIDE FOR SUITS AGAINST GOVERNMENT,

for His Highness' gracious approval.

Dewan.

K. S

6 c

Record of Cases submitted for the Orders of His Highness the Maharaja.

Subject.

Bills to provide for suits against Government.

298

(42)

Order.

~~KRW~~

6/10/22

42

Rec'd

7 OCT 1922

4
7/10

F.R.S. III—3]

Routine Notes.

[To be used only for notes, requisitions, etc., not intended for permanent record.]

This was received addressed to me — Have taken out the rest but puts it to the Mss Secy for printing & translation by 6/Clerk 5:10 P.M.

Seward

Sec

Mss supplied to Printers

Today

V

7.0

Distributed Copies to RA members yesterday. CWS 8/10.

N.B.—Should routine notes be written on small slips, the notes must be copied, or slips pasted on this form.

64

4465/26

G.R.S. III—31

Routine Notes.

[To be used only for notes, requisitions, etc., not intended for permanent record.]

Bill re suits against Govt.

163) Mr. file should be perused by Law with the notes of the discussion at the recent H. meeting. CAG 13/10

Leg. Have they notes. Please get the transcripts from the Steno. reports & put up. CAG 13/10.

Leg 13/10 The Stenographers notes are put up & also the file

CAG 14/10/20

APR 14/10 16/4 Discussion in the R.A are herewith put up. The gist of the discussion is as follows:—

(3) (1) Power to be retained & added to the list

(2) Suits for injunctions to be provided for.

(3) Remedy to be provided for damages for departmental negligence

(4) Judicial Officers' Protection Regulation to be repealed.

145 The other matters relate to amendment of Land Rev. Code, Irrigation Bill &c & are beyond the scope of the present bill.

Chief Secy) CAG

N.B.—Should routine notes be written on small slips, the notes must be copied, or slips pasted on this form

G.R.S. III—3]

Routine Notes.

[To be used only for notes, requisitions, etc., not intended for permanent record.]

N.B.—Should routine notes be written on small slips, the notes must be copied, or slips pasted on this form.

G. R. S. III-2]

64

General and Revenue Secretariat.

Legs. File No. 61/22 of 19 21/22.

Serial No.

153 Submd. with the drafts of Statement of Objects & Reasons for the Bills. They have to be approved in Council and the permissions of H.E. has perhaps to be obtained for placing Bills before the Legislative Council.

154 approved

155 Please type out fair copies

C. to Dr. 30/11

156 Shew. with a typed copy.

157 Draft

C. to Dr. 4/11

B. Vale 4/11

158 Second Member

6/11/22

159 Yes. Please submit these drafts with the necessary

12/11

13/11/22

Dewan

The Obj. & Reasons have been sent. Can/Exp. then shall no doubt submit the proposed amendments in this matter the draft Bills will be submitted to you.

14.11

14.11

DEWAN'S OFFICE.
RECD. ON NOV 13 1922
No. 2784

2850 6.XI.22

NOTE—Contn. sheet

G. R. S. III-2]

General and Revenue Secretariat.

Legislative File No. 61 of 1921

87

Serial No. 162

(1)

Appointment of Diwan's minute before transfer of file to Council Section

3064
14-11-22

Second Member. 14/11/22

Sir Hamza Ali

To Chief Secretary with compliments

15/11/22

163) Encl. 3 K. Maitlan
16/11

164) Secn. No remarks
Rec'd P. Rajkumar Sec.
20.11.22

NOTE—Contn. sheet.

68

(For Disposal by Circulation.)

No. C. 214

..... 19.22.

GENERAL AND REVENUE SECRETARIAT.

Council Matter.

SUBJECT.

Draft bill to provide for suits against Government.

CIRCULATED TO THE MEMBERS OF COUNCIL.

By Order,

17th November 19 22

Chief Secretary to Government.

Extraordinary Member of Council.

4161.5.45
18.11.22

First Member of Council. Opinion recorded

Rec
20.11.22

3288
23-11-22

Second Member of Council. Seen by the Member

Third Member of Council.

Submitted to 2nd Member for perusal

Hon. Secy. Legl. Council 25/11/22

G. R. S. III-2]

General and Revenue Secretariat. | Legislative File No. 61 of 1922.

165) Secy Leg Council – Ambassador Dewan's permission may have been taken for introduction into Legis Council 25/11/22 Dy Secy to Govt (Sgd) 25/11

166) Drafts published under Rule 32 are put up.

Sgd 25/11/22 par 167) The Secretary Member was pleased to order, this morning, that since the Bills in question were placed before the Legislative Council for the introduction of the Bills, and that they may be published under Rule 32 of the Rules of Business of the Leg Council, with the permission of the Dewan.

1) Drafts Notifications are put up for now.

Sgd 25/11 ASA 169) The last date for the publication of the Bill in the Gazette is 30th of the current month.

Dewan } J. Appaji Sgd 25/11

170) Asst Legislative Secy. Submitted. Mr Lance the Solicitor to Govt 4/11.

DEWAN'S OFFICE. Received NOV 25 1922. Reg. No. 3074

NOTE—Contn. sheet.

G. R. S. III-2]

General and Revenue Secretariat. | Legislative File No. 64 of 1922.

Serial No.

Recd 27.11.22

A S R 27/11/22

17) Secd. May the Draft notifications issue?

Approved 27/11 A.S.R

17-A Yes. Put side on the draft paint raised by the Dewan

173) Done & resubmitted today

Issued 4.24 & 4.25 of 28/11/22

17) Resolved after issue. The files with the Bills have been submitted to H.H. and approved by him on the 6th Oct. 22. But the statements of objects & reasons were put up afterwards

175 In the Bills providing for suits against Govt. the Dewan has made some alterations. It is presumed that it is intended to delete only the word "culpable".

28/11 This word is omitted in the Press copy & the word "negligence" retained.

28/11 Third reference is noted in the minute of the Dewan dated 27-11-22

As the Bills have received the approval of His Highness, it is a point for orders whether they have to be submitted again. The only new addition is the statement of objects & reasons.

Dewan 28/11

DEWAN'S OFFICE.
Recd. on NOV 28 1922
Seq. No. 3144

NOTE—Contn. sheet.

No need culpable negligence is worked out in rules.

G. R. S. III-2]

General and Revenue Secretariat. | Legs File No. 61 of 1924

Rec'd 29-11.

Serial No.

a S 29.11.

179 Please scrutinise also in the Urdu copy
Jog 29/11

180 Subd. All the three words 'by culpable negligence' will have to go. If passed, these words will be omitted.
Addl A.C.K 181 Legs Jog 29/11
To be corrected accordingly.
The file may perhaps be submitted to 2nd member for perusal of Dewan's orders.
34456 29.11.24
Sd S.G 29/11/24
Addl A.C.K 29/11
182) Submitted for perusal 2nd member
Jog 29/11/24

Jog
We have got only a Summary of the provisions of the Baroda State in the file. If approved a copy of the same may be sent to Mrs. Rangacharya (vide p. n. D).
Yes Jog
+ Copies of the Bills have been received. Send with a draft forwarding the same to the Resy.
Sd Issue
6/12/24
Jog 6/12/24

NOTE—Contn. sheet.

G. R. S. III-2.

General and Revenue Secretariat. | Legs File No. 61 of 1922.

Serial No.

1. 2o
The Secy. to the Resident
No Pol. 5094 of 7-12-22
forwards copies of Bills
to provide for suits against
Govt. & to amend the C.P.C.
1908 Sinha's invite a draft forwarding
& 2. from the Secy to the Baroda Regn.
Resident. to Mr. M.C. Rangachar.
No 9810 of 13-12-22 Sd
states that the Resident 7/12/22 Sd/-
sees no prima facie
objection to the introduc-
tion of the Bills before the Legislative Council

The Bills are to be read & referred to Select committee at the meeting of the Ll. on 19th inst.
The members of the Committee have to be selected. Perhaps the same committee can consider both the Bills at one sitting
Stated for orders.

3903
14.12.22

Sd
16/12/22
Asst
14/12/22

2nd member
1 Mr Mathew
2 Rao Bahadur M. Venkataramanayya
3 Mr. M. Rama Chandra Rao
4 Mr BVV Vizadeva
5 Mr Venkatasimha
6 Mr Venkatramanayya
7 The Pvt. Secretary

Myself

NOTE—Contd. sheet.

G. R. S. III-2

General and Revenue Secretariat.

Legis. File No. 61 of 19 24

Serial No.

Both the Bills were referred on the 18th Dec: 22, to the same Select Committee the members of which are mentioned in the previous page.

The date of the meeting has to be fixed.

Subd. for orders.

4380
5-1-23

2nd member

5/1.

Secretary to 1st Asst. 5.1.23

12/1

Some notice

12/1

Subd. with a Resp- notice of the meeting.

Some day 12/1

Issued. 81-84 & C. 16/1/23

A Bill to provide for Suits against Government.

WHEREAS it is expedient to provide for suits against Government, His Highness the Maharaja is pleased to enact as follows:—

1. (i) This Regulation may be called "A Regulation to provide for Suits against Government."

(ii) It shall extend to the whole of Mysore, and

(iii) It shall come into force on.....

2. A suit to which the Government of Mysore is a party as a defendant may be heard and determined by the Principal Civil Court of original jurisdiction having jurisdiction over the subject matter of the suit, if the claim in respect of which the suit is brought is for any of the following reliefs:—

(*a*) for recovery of land, goods, or money in unlawful possession of Government or for compensation when restitution cannot be given;
(*b*) for specific performance of contracts;
(*c*) for damages for breach of contracts, express or implied;
(*d*) for rents and mesne profits:
(*e*) for the rectification or cancellation of any instruments;
(*f*) for compensation for injury to person or property caused by culpable negligence in any business concern managed by Government.

3. Notwithstanding anything contained in the Code of Civil Procedure, no Civil Court shall take cognisance of any suit against Government except in regard to the matters expressly provided for in this Regulation or in any other enactment for the time being in force.

Dist Bds / Legis

Dasara Session Oct. 1932 — Appendix D

371

7

Bill further to amend the Code of Civil Procedure.

WHEREAS it is expedient further to amend the Code of Civil Procedure, 1911, His Highness the Maharaja is pleased to enact as follows:—

1. For the sub-heading of Part IV, the following sub-heading shall be substituted; namely—

"Suits by or against the Government or Public Officers in their official capacity."

2. In Section 79 of the Code, the words "or against" shall be inserted between the words "by" and "the" in both the places.

3. (i) In Section 80 of the Code, between the words "against" and "a" occurring in the first line, the words "the Government, or" shall be inserted.

(ii) For the words "been delivered to him" in the same section, the following words shall be substituted, namely—

"been in the case of Government delivered to, or left at the office of, the, Chief Secretary to Government and in the case of a Public Officer, delivered to him."

4. In Section 82, between the words "against" and "a" the words "the Government, or" shall be inserted.

Summary of Discussion.—Mr. B. Narasinga Rao wanted that suits for injunctions should also be included. The Second Member of Council replied that this could not be done as provisions regarding injunctions were removed from the Specific Relief Act. Mr. Narasinga Rao also urged that power should be taken to add to or subtract from the list from time to time and he was given to understand that a positive form was adopted, as a negative form was not possible and that the list was subject to any changes that may be proposed in future.

It was also represented that remedies should be provided for illegal actions of Government servants in regard to the supply of water and other facilities for the cultivation of land. It was pointed out, in reply, that these matters related to revenue law and they could not be provided for in the Bill, but will find a place in the Irrigation Bill which is under contemplation. Mr. G. Paramasiviah suggested that negligence in respect of any department of Government must be provided for. This suggestion was noted.

Subs. for orders. Kind reference is invited to the 2nd member's minute in para 8 of the notes in the file re. Suits against Govt. to be seen below.

In view of the member's orders, no further action appears to be necessary. Submitted for typed

2nd member

4737 / 1.2.33

25

General and Revenue Secretariat. | Legis. File No. 61 of 1924.

Serial No.

may be sent to the R. A. section for note & return.

GG
23/2/23

To the Asstt. R.A. Secy, with compts

Noted and returned.

MS
5.2.23.

To Secy. with a draft of the Select Committee's report

GG.
17/2/23

Asst
19/2

It appeared the following para will be added just after the heading "Bills in private for suits against Govt":—

"We have considered the general question whether the bill should be in the positive or negative form. The practical difficulty in exhaustively enumerating the instances where suits against Govt cannot lie was pointed out & it was decided to retain the bill in the positive form in which it has been drafted; any additions considered necessary in the light of experience gained in the working of the bill, being marked by an Amendment of the bill."

2nd Member

Dy 20/2

39 undertaken
(9:) Dy-appd
Asst
19/2

5408
19/2

Asst
19/2

NOTE—Contn. sheet.

G. R. S. III-2]

7/6

General and Revenue Secretariat. | Legis File No. 61 of 19 24

Serial No.

Subo. with a draft forwarding copies of the report to the members for approval.

Sec
21/2/1923.
SKR
21/2

Done
SKS
21/2

Subo. with a draft reminders to members who have not returned the report.

Sec
2/3/1923.
SKR
3/3

I believe you have received the report from Mr Venkatarama Iyer. Secretariat
Done
SKS
3/3

All the members have sent their approval except Mr. Venkatasubba. Perhaps his approval may be noticed subsequently on receipt. Subo. with a draft publishing the report.

Sec
13/3/1923.
SKR
13/3

Done
SKS
13/3

Subo. with a draft reminder to Mr. Venkatasubba.

Sec
23/3/1923.
SKR
23/3

Issued
CAJ
26/3

NOTE—Contn. sheet.

G. R. S. III-2]

General and Revenue Secretariat.

Legn File No. 61 of 19 74

Serial No. 9

Mr. Venkatesaiya has since sent the report with his approval. Subject with a draft notification

Issue
cir
7.3

Issued 7.3.74 dy 28/3/74

~~The amendment has been~~

186 Subject with Mrs. H. Krishna Rao's letter giving notice of an amendment to sub-clause (4) of clause 2 of the Bill to provide for suits against Local Bodies notice has been given & approved it will be included in the agenda

137 This has to be included in the Agenda, according to rules.

It's The point was considered by the Committee, and the words "or managed" were dropped, as the scope of the section would be very wide then.

C.

2nd March

cwg 6/4

105 6.4.74

NOTE—Contn. sheet.

7/4

qm cwg 1/4

G. R. S. III-2.

5/61

76

General and Revenue Secretariat. | Legs File No. 67 of 1924.

Serial No.

1 | 1892 — S.C report has been agreed to in the Legislative Council on the 16th inst, the amendment of Mrs Krishna Rao having been lost.

(2) Submd. with a draft to the Regs. for obtaining the sanction of the Govt. of India.

(3) I am not sure if sanction is necessary in the case of an Bill of this kind against Govt. Anyway the draft may issue.

C Alexander 16/4
Cag.
2/4

3. | To the Secy to Resident No Pol 997 of 1-5-24. Forwards copies of the Bill & supplies for Govt of India sanction.

4 | From the Secy to Resident No 4004/4 of 14-6-24. Intimates that the Govt in Council accords their sanction to the Bill.

(5) Submd. The Bill is now included in the agenda for the next meeting for being passed &c

15/6/24. Chief Secy and Minister Secy 16/6 Cag. 15/6

DEWAN'S OFFICE.
Recd. on JUN 20 1924
Reg. No. 7409

505/1646.

NOTE—Contn. sheet.

G. R. S. III-2]

General and Revenue Secretariat.

Legis File No. 61 of 1921

60/0 79

Serial No.

DEWAN'S OFFICE.
Recd. on JUN 20 1923
Reg. No. 7209

(6)

Speaker

A.R. Banerjea

Rule 96 Sch 9 no 6

B
Nil
Cag 20/6

96) The bills were published under rule 82 and were referred to a Select Committee at the meeting on the 18th December. The Select Committee report was considered & accepted on the 16th April 23 & the Bills finally passed on the 29th June 23.

Submit with a D.F. for promulgating the Bills in Extraordinary.

Sd
20/7/23
AR 7/7

98 Necessary
C.A.
cag
7/7

DEWAN'S OFFICE.
Recd. on JUL 10 1923
Reg. No. 232

97) The D.F. has been submitted. Gazette copies as directed. Proofs be got typed after approval

Sd
6/7/23
AR 6/7

Done. May be typed now.
C.A.
cag
6/7

Submit with typed draft

Sd
7/7/23
AR 7/7

(8th members)
C.A.
cag
7.7

2.2 Corrected

Mr Speaker
7/7

S. N. Sahai
Dewan

9/7
cag
9.7

Printed 166
Bills 7-7-23

NOTE—Contn. sheet.

H A No 21

Final Note by the First Member of Council. 40

Subject:—

Promulgation into law of the Bill to provide for Suits against Government and the Bill to amend the Code of Civil Procedure.

203 On the 6th October 1922 His Highness was graciously pleased to approve of the Bill to provide for Suits against Government and the Bill to amend the Code of Civil Procedure introducing certain consequential changes. As the Bills had once been discussed in the Representative Assembly, it was considered unnecessary to ask for leave to introduce the Bills into the Legislative Council and they were published, with the Dewan's permission, under rule 32 of the Rules of Business of the Legislative Council. The Bills were read and referred to a single Select Committee at the meeting of the Legislative Council held on the 18th December 1922. The Select Committee's reports were considered and accepted on the 16th April 1923. The sanction of the Government of India having been obtained, both the Bills were finally passed at the meeting of the Legislative Council held on the 29th June 1923.

204 His Highness' gracious sanction is now solicited for promulgating both the Bills into Law.

Attached.

BANGALORE.
9th JULY 1923.

MEMBER OF COUNCIL.

G. R. S. IV—6]

Submitted to His Highness.

I submit herewith a Final Note by the Offg. FIRST Member of Council on the subject of promulgation into law of the Bill to provide for suits against Government and the Bill to amend the Code of Civil Procedure,

for His Highness' gracious approval.

Dewan.

JUL 1923

STATEMENT OF CASES SUBMITTED FOR THE ORDERS OF HIS HIGHNESS THE MAHARAJA DURING THE TOUR OUTSIDE THE STATE IN July 1923.

Serial No.	Subject	Recommendation of Council, or Member of Government in charge, as the case may be	Dewan's recommendation	Orders of His Highness	Orders regarding submission of files (*vide* foot-note)
21	Promulgation into law of the Bill to provide for suits against Government and the Bill to amend the Code of Civil Procedure.	....	....	38 Sanctioned by His Highness H. Muthukrishna 18/7/23	

Note.—The letter a, b or c may kindly be inserted by the Private Secretary to His Highness in the last column to indicate whether—

File may be submitted at once ... ... a
File may be submitted after His Highness' return ... ... b
File may not be submitted at all c

WD 1212—GPB —500—7-1-19

G. R. S. III-21

General and Revenue Secretariat.

Legislative File No. 61 of 1923.

Serial No. 22

Draft with draft orders promulgating the Rules in a Gazette.

Secretary
7/8/1923.

To the Compiling Dy.

Ordered that the Regulation to provide for suits against Govt which received the assent of H.H. the Maharaja, on the 18th July 1923 be published as Regln No VII of 1923.

To the Compiling Dy.

Ordered that the Regln to amend the Code of Civil Procedure which received the assent of H.H. the Maharaja, on the 18th July 1923, be published as Regln No VIII of 1923.

NOTE—Contn. sheet.

2855

G. R. S. VI—G/32]

64

SUBJECT.....

.....

.....

Diary No. of letter replied to.....

Section Cant
File No. 49-14
Serial No. 1

GENERAL AND REVENUE SECRETARIAT,
(Cant)
, *the* 191 .

No. 3236 Dy 21-7-1917

Date of issue 21-7-1917

To

Signed by Dr. G. Sreenivasaiya

The Registrar, Chief Court

Sir,

I am directed to request you kindly so good as to forward, for the information of Govt, a copy of the judgement of the Chief Court in the recent Mysore Land Requisition Case brought by Mr. M. Murti Rao against the Dt Judge, Mysore.

I have &
Govt Order
Secy Govt
Genl Depts

over.

ADC
17/7/17

2085

65

G. R. S. VI—G/32]

SUBJECT.....

.....

.....

Diary No. of letter replied to.....

GENERAL AND REVENUE SECRETARIAT,
(Courts)
, *the* '191 .

Date of issue 21-7-17

Signed by S. Narasimha Rao

Section Courts
File No. 49-14
Serial No. 2

No. Pol. 72 & 24-7-17

To

The H.A. Resident in Mysore

Sir,

In connection with a proposal made in the Representative Assembly for amending the Civil Procedure Code of Mysore so as to allow suits being filed against Government, I am directed to request you to be so good as to ascertain, for the Durbar, the practice obtaining in the matter in the Native States noted in the margin.

I have &c

By Secy to Govt
Genl Depts

Ⓚ Hyderabad
Baroda
Travancore
Indore
Cochin.

ADC 17/7

D. Dis: No.75. Dt 24-7-17

AUG 1917

Chief Court of Mysore,
Bangalore, 28th July 1917.
31st

From

N. T. GOPALIENGAR, Esq., B. A., LL. B.,
Registrar of the Chief Court of Mysore.

GEN. SECRETARIAT
II
JUDICIAL
1- AUG 1917

To

D. M. NARASINGA RAO, Esq., B. A., B. L.,
Secretary to the Government of Mysore,
General Department.

Sir,

As desired in your letter No. J. 236/Cts.49-14-1 dated the 21st Instant, I am directed to forward herewith a copy of Judgment of this Court in Regular Appeal No.230 of 1915-16, preferred against the decree of the District Judge of Mysore (Mr. Mir Humza Hussein) in Original Suit No.10 of 1914-15, the Mysore Land Acquisition Case.

I have the honor to be,
S i r,
Your most obedient servant,

N. Gopalaingar

R E G I S T R A R.

M.S.C.

IN THE CHIEF COURT OF MYSORE AT BANGALORE.

Wednesday, the 21st day of March 1917.

P R E S E N T.

Sir Leslie C. Miller, Kt., Chief Judge,

and

Mr. Justice T. Paramsiva Iyer.

Regular Appeal No. 230 of 1915-16.

Mr. M. Murthy Rao.....Plaintiff.....Appellant.

(By Messrs. H. Narasinga Rao and C. Seshachar).

Vs.

1. The Secretary to the Government of Mysore, General and Revenue Departments.
2. A. Subramanya Iyer, Esq., Deputy Commissioner, Mysore District.

.....Defendants....Respondents.

(By Mr. C. S. Doraswamy Iyer, the Government Advocate for the Government.)

Regular Appeal against the Decree of the District Judge of Mysore (Mr. Mir Humza Husein) in O.S.No.10 of 1914-15.

This appeal coming on for hearing on Friday and Wednesday, the 2nd and 7th of March 1917, the court delivered the following:--

J U D G M E N T.

The Chief Judge.

This appeal arises out of the proposed acquisition of certain land in Mysore under the Land

Acquisition

Acquisition Regulation.

The suit is for a declaration that the order of Government authorizing the Deputy Commissioner to take action for the acquisition is contrary to the Regulation and of no effect and for an injunction restraining the Deputy Commissioner from taking possession of the land.

The first defendant is the Secretary to Government in the General and Revenue Departments and the second is Mr. A. Subramanya Aiyar, Deputy Commissioner of Mysore.

The suit has been thrown out on the ground that it is a suit against the Government and that in Mysore suits do not lie against the Government.

The question thus determined was not raised in the written statement of the defendants but appears to have been raised before the first hearing and the District Judge framed three issues to deal with it.

It will be seen that the suit is not in form a suit against the Government and the written statement did not raise the question whether it would not lie against the defendants.

The District Judge would in my opinion have done better to try it on the pleadings or to have had them amended: if he found that the reliefs claimed could be given only in a suit to which the Government is a party he could have thrown out the suit for want of a cause of action against the defendants: if there is a cause of action against the defendants, it was unnecessary to make the Government a party unless the relief asked for could not otherwise be given.

It seems clear that no suit will lie against the Secretary to Government for signing the declaration under section 6 of the Regulation: he signs as an officer empowered

to

to certify the orders of the Government and the declaration is made under section 6 by the Government. The Secretary is responsible at most for the publication of the notice and if the notice is not libellous I do not see how any cause of action can arise against him personally or in his official capacity as Secretary. That however is not the principal question.

There are observations in XVIII Mysore C.C.R. 92 and in XII M. L. R. 145 to the effect that a suit does not lie against the Government of Mysore and we are asked to reconsider that position.

The fact that the Civil Procedure Code makes no provision for suits against the Government and so far as we have been able to ascertain, never has made any provision for such suits in Mysore is evidence that suits against the Government were not contemplated but is not conclusive. Mr. Narasinga Rao however did not shew us any case in which a suit against the Government has been successfully prosecuted. Nevertheless suits aginst the Government are recognized by the Land Revenue Code sections 221, 222, 225, 230 - and provision is made in article 17 of the schedule of the Limitation Regulation for a suit against Government for compensation for land acquired for public purposes. The latter provision no doubt does not nonfer a right of action, but it suggests the existence of that right, and the provisions of section 222(a) of the Land Revenue Code very clearly declare the right of suit against the Government in the matters to which that section refers.

It is very difficult therefore to say that in Mysore a right of suit against the Government is unknown.

Mr. Narasinga Rao relied also on section 3(16) of the General Causes Regulation of 1899 where the Government is

defined

defined as the person authorized to administer executive Government in Mysore. On this definition he based his proposition that 'the Government' in Mysore is not synonymous with 'the State', the 'soverign power', 'the Crown' but is simply a public officer. Assuming that, the case is not really carried much farther because the definition alone will not give a suit against a public officer as such: as representing the Government. Suits do not lie against public officers as such when they are not allowed against the Soverign. The officer being the agent of the Soverign cannot be sued as such when his principal is not liable (Raleigh V. Goschen (1898) I Chapter at page 78): he may of course be sued in respect of his own acts purporting to be done in his official capacity but that is obviously a different thing.

At most if the argument has any force, it would allow of a suit against the members of the Government but that would not help the plaintiff to reach the public treasury as of right.

The definition in section 3(16) of the General Clauses Regulation will not apply to the Land Revenue Code which was enacted before it, nor to article 16 of the Limitation Regulation where the 'Government' is clearly the 'Government' of section 222(a) of the Land Revenue Code. Nor will it necessarily apply to article 17 or 18 because there the Government is evidently a body capable of paying compensation out of the public funds. The application of section 3(16) might in these cases be excluded by repugnancy of the subject.

The argument from section 3(16) of the General Clauses Regulation does not therefore impress me very much:

but

but seeing that the law does contemplate some suits against the Government, reading that expression as equivalent to 'the State' or 'the Crown', it would seem desirable that the Legislature should provide some procedure for use in those suits.

The fact however that certain Regulations provide for suits against the Crown does not go far to shew that suits will lie apart from statutory provisions and while on the one hand I cannot accept the argument that the jurisdiction conferred by the proviso to section 221 and by section 222 of the Land Revenue Code was given more or less by inadvertence in introducing the Bombay Code into Mysore,— I cannot on the other hand accept the existence of that jurisdiction as proving that in Mysore all claims of a civil nature can be advanced against the State by way of ordinary suit, except such as are barred by enactment.

Mr. Narasinga Rao did not refer us to any authority historical or other shewing that the common law of Mysore permits claims to be so advanced, and I prefer not to pronounce an opinion in this case, because it seems to me that apart from the liability of the State to be sued the plaintiff can get in the suit as framed the relief if any to which he may be entitled.

I have no doubt whatever that the courts can decide whether an act of the Government which purports to be done under the warrant of an enactment, is or is not warranted by that enactment and if it is not so warranted to declare that in a suit against the officer authorized to give effect to the illegal act. A public officer who acts illegally cannot protect himself by pleading the authority of the Government.

The

92

The District Judge considers that a declaration would be fruitless if it cannot be followed by an injunction. It is at least probable that the Government would withdraw a notification declared by the courts to be illegal in a suit against a public officer, but I do not think the courta are powerless to issue an injunction in a proper case to restrain a public officer from committing an illegal act. There is no question of a mandamus against the Crown and I cannot see how section 56(d) of the Specific Relief Act stands in the way. It cannot be one of the duties of any department of the Government to acquire land illegally under colour of the land acquisition regulation. The injunction would not prevent any legal action on the part of the Deputy Commissioner

In the case of Raleigh V. Goschen (1898) I Chapter 73, Romer, J., lays down the principles applicable to cases like the present and assuming a suit against the Government of Mysore to be incompetent those principles which are of general application and do not depend on a particular constitution may serve to guide us here.

The attorney General in that case admitted that the court could inquire into the legal justification set up for an act alleged to be unlawful; and the learned Judge held further that the plaintiffs in the case could sue any of the defendants individually for trespasses committed or threatened by them. The remedy for a threatened trespass is of course an injunction and an injunction was asked for in the case. No one suggested that to grant it would be to interfere with the duties of a public department provided it was granted against the defendants individually and not as a department of the Government.

It

It seems to me therefore that the District Judge is wrong in holding that an injunction cannot be issued in a proper case against the second defendant.

I have already expressed the opinion that there is no cause of action against the first defendant for signing the declaration. It is true that the officer, even if he be the head of a department, who authorizes or directs a trespass by a subordinate officer can be sued in respect of the trespass but it seems to be impossible to hold that the Secretary in this case is the person who authorized or directed the Deputy Commissioner to take possession of the plaintiff's land. The Secretary is not the Government of Mysore, and section 7 of the Regulation enacts that it is the Government or some officer authorized by the Government from whom the authority of the Deputy Commissioner is to be derived. The Secretary is not alleged to have received authority to give directions to the Deputy Commissioner: he is merely the hand by which the authority of the Government is transmitted: his signature if it is found in the Government Order (it is not in the notification) is evidence that the authority has been given by the Government, and nothing more. He is not the head of a department of the Executive Government.

The suit as against the first defendant must in this view be dismissed; the District Judge does not give separate costs in favour of each defendant and it is unlikely that separate costs have been incurred. I would make no order in regard to the first defendant's costs.

For the disposal of the suit against the second defendant there do not seem to be more than two remaining questions (1) whether the courts are entitled to decide

that

that the purpose stated in the notification is not a 'public purpose' within the meaning of the regulation and (2) if they are so entitled whether the purpose stated in the present case is a public purpose or not.

It is not alleged in the plaint that payment for the land is not to be made from the public revenues, and hence no question seems to arise under the proviso to section 6.

As Mr. Narasinga Rao desired to have the opinion of the District Judge on the questions arising though they seem to be questions of law only, the suit may be remanded for disposal, costs abiding the event.

(SD) LESLIE C. MILLER,

CHIEF JUDGE.

Mr. Justice T. PARAMASIVA IYER.

I agree.

(SD) T. PARAMASIVA IYER,

J U D G E.

Memorandum of costs incurred in this appeal:--

	By the appellant (Plaintiff)			By the respondents (Defendants).		
	Rs.	A	P	Rs.	A	P
Court fee on memorandum of appeal.	10	0	0	-	-	-
,, Power of Attorney	2	0	0	-	-	-
,, Processes.	1	0	0	-	-	-
,, Copies of decree and judgment.	1	8	0	-	-	-
Advocate's fee	100	0	0	100	-	-
Fees for copying	7	2	0	-	-	-
Cost of paper	0	0	6	-	-	-
Printing charges	8	13	8	-	-	-
Total.	130	- 8	- 2	100	0	0

(Sd) N. T. GOPALIENGAR,

REGISTRAR.

"C O P Y"

N. Gopalaiengar

REGISTRAR.

M.S.C.

95

Letter No.2860/J., dated the 28th August 1917, from the First Assistant Resident, Hyderabad, to the First Assistant to the Resident in Mysore.

With reference to your letter No.5898, dated the 6th August 1917, I am directed to forward, for transmission to the Mysore Durbar, an English translation of Act V of 1320 Fasli, entitled an Act relating to suits against His Highness the Nizam's Government.

DIARY No. 1541

GEN. & REV. SECT. III 3 SEP 1917

No. 6492 Jam 1

Mysore Resident's Office,
Bangalore, 3rd September 1917.

From the First Assistant Resident.

A copy of the foregoing letter, with enclosure, is forwarded to the Secretary to the Government of His Highness the Maharaja of Mysore, General Department, for information with reference to his letter No. Pol.72, dated the 21st July 1917.

GEN. & REV. SECRETARIAT III JUDICIAL 4 SEP 1917

2. The replies of the other Durbars will be communicated when they are received.

for First Assistant Resident.

96

MYSORE RESIDENT'S OFFICE,

Bangalore, dated the 13th Sept 1917.

388/ 12-9-17

No. 7064 Forwarded to First Asst. Resident

A copy of the marginally* cited letter, with enclosures, is forwarded to the Secretary to the Government of His Highness the Maharaja of Mysore, General Department,, endorsement No. 6792 dated the 3rd September 1917.

*No. 2204/17 dated 2-9-1917 from the Resident in Travancore & Cochin.

in continuation of

GEN. & REV. SECRETARIAT
III
JUDICIAL
SEP 1917

H S Jones
First Assistant Resident.

R. O. 178.—R. P. B.—8-1917.—500.

SUITS BY OR AGAINST SIRKAR OR PUBLIC OFFICERS.

Suits by or against the Diwan of Cochin.

415. Suits by or against the Sirkar shall be instituted by or against (as the case may be) the Diwan of Cochin.

Persons authorised to act for Sirkar.

416. Persons being ex-officio or otherwise authorised to act for the Sirkar in respect of any judicial proceedings shall be deemed to be the recognized agents by whom appearances, acts and applications under this Code may be made or done on behalf of the Sirkar.

Plaints in suits by the Diwan of Cochin.

417. In suits by the Diwan of Cochin, instead of inserting in the plaint the name, description and place of abode of the plaintiff it shall be sufficient to insert the words "The Diwan of Cochin."

Agents for Sirkar to receive process.

418. The Government Pleader in any Court or such other person as the Diwan may, for any Court, appoint in this behalf shall be the agent of the Sirkar for the purpose of receiving processes against the said Diwan of Cochin issuing out of such Court.

Appearance and answer by Diwan of Cochin.

419. The Court, in fixing the day for the said Diwan of Cochin to answer to the plaint, shall allow a reasonable time for the necessary communication with him through the proper channels and for the issue of instructions to the Government Pleader to appear and answer on behalf of the said Diwan of Cochin, and may extend the time at its discretion.

Attendance of person able to answer questions relating to suit against Sirkar.

420. The Court may also, in any case in which the Government Pleader is not accompanied by any person on the part of the said Diwan of Cochin, who may be able to answer any material questions relating to the suit, direct the attendance of such a person.

421. Where the defendant is a public officer the Court may send a copy of the summons to the head of the office in which the defendant is employed, for the purpose of being served on him, if it appear to the Court that the summons may be most conveniently so served. (Service on public officers.

422. If the public officer on receiving the summons considers it proper to make a reference to the Diwan before answering to the plaint, he may apply to the Court to grant such extension of the time fixed in the summons as may be necessary to enable him to make such reference and to receive orders thereon through the proper channel; (Extension of time to enable officer to make reference to Sirkar.

and the Court upon such application may extend the time for so long as appears to be requisite.

423. No suit shall be instituted against the said Diwan of Cochin, or against a public officer in respect of an act purporting to be done by him in his official capacity, until the expiration of two months next after notice in writing has been in the case of the Diwan of Cochin, delivered to, or left at the office of, the Diwan of Cochin, and in the case of a public officer, delivered to him or left at his office, stating the cause of action and the name and place of abode of the intending plaintiff and the relief which he claims; and the plaint must contain a statement that such notice has been so delivered or left. (Notice previous to suing Diwan of Cochin or public officer.

424. No warrant of arrest shall be issued in such suit without the consent in writing of the District Judge. (Arrests in such suit.

425. If the Sirkar undertakes the defence of a suit against a public officer, the Government Pleader, upon being furnished with authority to to appear and answer to the plaint, shall apply to the Court, and upon such application (Application where Sirkar undertakes defence.

100

the Court shall cause a note of his authority to be entered in the register.

426. If such application is not made by the Government Pleader on or before the day fixed in the notice for the defendant to appear and answer to the plaint, the case shall proceed as in a suit between private parties; except that the defendant shall not be liable to arrest, nor his property to attachment, otherwise than in execution of a decree.

Procedure where no such application made.

Defendant not liable to arrest before judgment.

427. In a suit against a public officer in respect of such act as aforesaid the Court shall exempt the defendant from appearing in person when he satisfies the Court that he cannot absent himself from his duty without deteriment to the public service.

Exemption of public officers from personal appearance.

428. When the decree is against the said Diwan of Cochin or against a public officer in respect of such act as aforesaid, a time shall be specified in the decree within which it shall be satisfied; and if the decree is not satisfied within the time so specified, the Court shall report the case for the orders of the Diwan.

Execution shall not issue on any such decree unless it remains unsatisfied for the period of three months computed from the date of the report.

Procedure where decree against Sirkar or public officer.

(True copy.)

Resident.

T.S.P.

H.9.17

Travancore

CHAPTER XXVII—SUITS BY OR AGAINST GOVERNMENT OR PUBLIC OFFICERS.

Suits by or against Dewan.

401. Suits by or against the Government shall be instituted by or against (as the case may be) the Diwan of Travancore.

Persons authorized to act for Government.

402. Persons being ex officio or otherwise authorized to act for Government in respect of any judicial proceeding shall be deemed to be the recognised agents by whom appearances, acts and applications under this Code may be made or done on behalf of Government.

Plaints in suits by Dewan.

403. In suits by the Diwan, instead of inserting in the plaint the name and description and place of abode of the plaintiff, it shall be sufficient to insert the words "The Dewan of Travancore."

Agent for Government to receive process.

404. The Government Pleader in any Court or such other person as the Government may for any Court appoint in this behalf shall be the agent of the Government for the purpose of receiving processes against the said Dewan issuing out of such Court.

Appearance and answer by Dewan.

405. The Court in fixing the day for the said Dewan to answer to the plaint shall allow a reasonable time for the issue of instructions to the Government Pleader to appear and answer on behalf of the said Dewan, and may extend the time at its discretion.

Attendance of person able to answer questions relating to suit against Government.

406. The Court may also, in any case in which the Government Pleader is not accompanied by any person on the part of the said Dewan, who may be able to answer any material questions relating to the suit, direct the attendance of such a person.

Service on public officers.

407. Where the defendant is a public officer, the Court may send a copy of the summons to the head of the office in

hich the defendant is employed, for the purpose of being served on him, if it appear to the Court that the summons may be most conveniently so served.

Extension of time to enable officer to make reference to Government.

408. If the public officer on receiving the summons considers it proper to make a reference to the Government before answering to the plaint, he may apply to the Court to grant such extension of the time fixed in the summons as may be necessary to enable him to make such reference and to receive orders thereon through the proper channel;

and the Court, upon such application, may extend the time for so long as appears to be requisite.

Notice previous to suing Dewan or public officer.

409. No suit shall be instituted against the said Dewan, or against a public officer in respect of an act purporting to be done by him in his official capacity, until the expiration of three months next after notice in writing has been, in the case of the Dewan, delivered to, or left at the office of the Dewan, and, in the case of a public officer, delivered to him or left at his office, stating the cause of action and the name and place of abode of the intending plaintiff and the relief which he claims; and the plaint must contain a statement that such notice has been so delivered or left.

Arrests in such suits.

410. No warrant of arrest shall be issued in such suit without the consent in writing of the High Court.

Application where Government undertake defence.

411. If the Government undertake the defence of a suit against a public officer, the Government Pleader, upon being furnished with authority to appear and answer to the plaint, shall apply to the Court, and upon such application, the Court shall cause a note of his authority to be entered in the register.

Procedure where no such application made.

412. If such application is not made by the Government Pleader on or before the day fixed in the notice for

Extract from letter No. 2626/C.B., dated 24th December 1940 from the Chief Secretary to His Highness the Maharaja of Mysore, to the Secretary to the Hon'ble the Resident in Mysore.

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* * * *

The Government of Mysore are advised that the Government of India can file a suit in Mysore to enforce private right although there is no provision in the Mysore Civil Procedure Code corresponding to Section 84 of the British India Civil Procedure Code. Should however, the Government of India prefer specific provision being made this purpose, this Government would be prepared to take suitable action.

* * * *

104

MYSORE RESIDENT'S OFFICE,

Bangalore, 18th January 1918

19 JAN 1918

No. 435-3. From the First Assistant Resident

A copy of the marginally* noted letter, with enclosures, is forwarded to the Chief Secretary to the Government of H. H. the Maharaja of Mysore, in continuation of endorsement from this office No. 9549, dated the 18th December 1917.

*No. 68-B, dated 15 11th January 1918, from the First Assistant to the Agent to the Governor General in Central India.

x. in 49-11-6

S.B 2/1

GEN. & REVENUE SECRETARIAT III JUDICIAL 19 JAN 1918

19-1-18

First Assistant Resident.

CAS.

R. O. 178—R. P. B.—10-1917.—500.

Letter No.68-B., dated the 11th January 1918, from the First Assistant to the Agent to the Governor General in Central India, Indore to the First Assistant to the Resident in Mysore.

With reference to your letter No.5901, dated the 6th August 1917, I am directed to forward a copy of a letter No.869, dated the 20th December 17, from the Chief Minister, Indore State, together with a copy of Chapter XXVII of the Indore State Civil Procedure Code dealing with the question of suits by or against the State.

"C O P Y".

Copy of letter No.869 dated the 20th December 1917 from the Chief Minister Indore State to the First Assistant to the Agent to the Governor General in Central India

.....

With reference to your letter No.2596-B, dated the 17th August 1917, I have the honour to inform you that the Civil Procedure Code of British India (Act XIV of 1882 as amended upto date) was, with the omission of chapters XXVII and XXXII and XLVIII and with certain modifications to suit local requirements, introduced in the State vide Judicial Department Notification No. 27 dated the 29th May 1907, published in the Holkar Sirkar Gazette No.2 dated the 17th June, 1907.

A copy of Chapter XXVII dealing with the question o suits by or against the State is enclosed herewith.

.....

True Copy

For Superintendent

Central India Agency Office

Chapter XXVII

Suits by or against Government or Public Officers.

Suits by or against the Holkar State

416. Suits by or against the Government shall be instituted by or against (as the case may be) the Holkar State.

Persons authorized to act for Government

417. Persons being ex-officio or otherwise authorized to act for Government in respect of any judicial proceeding shall be deemed to be the recognized --- agents by whom appearances, acts and applications under this Code may be made or done on behalf of -- Government.

Plaints in suits by the Holkar State.

418. In suits by the Holkar State, instead of inserting in the plaint the name and description and place of abode of the plaintiff, it shall be sufficient to insert the words "The Holkar State"

Agent for Government to receive the process.

419. The Government pleader in any Court (or such other person as the Government may for any Court --- appoint in this behalf), shall be the agent ~~of the~~ of the Government for the purpose of receiving processes against the Holkar State issuing out of such Court.

Appearance and answer by the Holkar State.

420. The Court, in fixing the day for the Holkar State to answer to the plaint, shall allow a reasonable time for the necessary communication with the Government through the proper channels, and for the issue ~~of~~ of instructions to the Government Pleader to appear and answer on behalf of the Holkar State or the --- Government, and may extend the time at its discretion.

Attendance of person able to answer questions relating to suit against Government.

421. The Court may also, in any case in which the Government Pleader is not accompanied by any person on the part of the Holkar State, who may be able to answer any material questions relating to the suit, direct the attendance of such a person.

Service on public officers.

422. Where the defendant is a public officer the Court may send a copy of the summons to the head of the office in which the defendant is employed, for the purpose of being served on him, if it appear to the Court that the summons may be most conveniently so served.

Extension of time to enable officer to make reference to Government

423. If the public officer on receiving the summons considers it proper to make a reference to the Government before answering to the plaint, he may apply to the Court to grant such extension of the time fixed in the summons as may be necessary to enable him to make such reference and to receive orders thereon through the proper channel: and the Court upon such application may extend the time for so long as appears to be requisite.

Notice previous to suits against the Holkar State or public officer.

424. No suit shall be instituted against the Holkar State, or against a public officer in respect of an act purporting to be done by him in his official capacity, until the expiration of two months next after notice in writing has been, in the case of the Holkar State, delivered to, or left at the office of, a Secretary to the Government or the Collector of the district, and, in the case of a public officer, delivered to him or left at his office, stating the cause of action and the name and place of abode of the intending plaintiff (and the relief which he claims): and the plaint must contain a statement that such notice has been so delivered or left.

Arrest in such suits.

425. No warrant of arrest shall be issued in such suit without the consent in writing of the District Judge.

Application where Government undertakes defence.

426. If the Government undertakes the defence of any suit against a public officer, the Government Pleader, upon being furnished with authority to appear and answer to the plaint, shall apply to the Court, and upon such application the Court shall cause a note of his authority to be entered in the register.

Procedure where no such application is made.

427. If such application is not made by the Government Pleader on or before the day fixed in the notice for the

the defendant to appear and answer to the plaint, the case shall proceed as in a suit between private parties, except that the defendant shall not be liable to arrest, nor his property to attachment, otherwise than in execution of a decree.

Defendant not liable to arrest before judgment.

Exemption of public officers from personal appearance.

428. In a suit against a public officer in respect of such act as aforesaid, the Court shall exempt the defendant from appearing in person when he satisfies the Court that he cannot absent himself from his duty without detriment to the public service.

Procedure where decree against Government or Public officer

429. When the decree is against the Holkar State or against a public officer in respect of such act as aforesaid, a time shall be specified in the decree within which it shall be satisfied: and, if the decree is not satisfied within the time so specified, the Court shall report the case for the orders of the Government.

Execution shall not issue on any such decree unless it remains unsatisfied for the period of three months computed from the date of the report.

True copy.

Secretary

Barbar Foreign Department.

MYSORE RESIDENT'S OFFICE,

Bangalore, 8th December 1917.

No. 9549/2.

A copy of the marginally* noted letter, with enclosure, is forwarded to the Chief Secretary to the Government of H. H. the Maharaja of Mysore, ...in continuation... ...of endorsement from this office No. 7067, dated the 18th September 1917.

*No. 12042, dated the 7th December 1917, from the First Assistant Resident at Baroda

for First Assistant Resident.

R. O. 178—R. P. B.—10-1917.—500.

Letter No.12042, dated the 7th December 1917, from t
First Assistant Resident at Baroda, to the First Assistant t
the Resident in Mysore.

With reference to your letter No.5899, dated the 6th
August 1917, I am directed to forward in original a memorand
prepared by the Assistant Legal Remembrancer, Baroda State,
summarizing the provisions of Part II Chapter 44 of the Bar
Civil Procedure Code, which deals with suits against the St
and State servants.

" C O P Y ".

In the absence of a provision to the contrary suit can lie against Government or Government Official for an act proposed to have been done by Government Officer in his official capacity.

But no suit shall lie against Government or any Government servant for any of the following matters:-

(1) Act of State or

(2) Regarding property which is

1. Chakariyat;

2. Vatan;

3. Jagir;

4. Saranjam;

5. Inam;

6. Asami;

7. Cash Grant; or

8. Barkhali; or

(3) To establish a right to serve as Vatandar or Village servant or for damages for being excluded from such rights; or

(4) For declaration that any order passed by the Settlement or the Revenue Department in respect of Vatandar, Inamdar or Village servants is void or inapplicable; or

(5) Regarding the System, Principle, ~~Protection~~ Proportion (Rates) and amount of land Revenue sanctioned by the Huzur ; or

(6) Regarding any act done in the collection of Land Revenue; or any act of a Government Servant assisting a Superior Holder or a landlord in realising dues from Inferior Holder or Tenant; or any act done in assisting the collection of such Revenue.

(7) Regarding any Notification in connection with the Survey and Assessment of the land

(8) Regarding full or partial remission of theland Revenue or any tax or cess levied by Government in accordance with any law in force for the time being

(9) Regarding any right to obtain any sum from or charged on the land Revenue

(10) Regarding any claim to be registered as a person liable to pay land Revenue, or as a Superior Holder, Inferior Holder, Landlord or Tenant in the Records of the Revenue, the Survey and Settlement Departments o the Village; or

(11) As regards ~~to~~ inserting, deleting or amending entry in the Records of the Revenue, the Survey ~~and~~ or Settlement Departments; or

(12) To set aside any auction, sale for arrears of the land Revenue on any other ground except irregularity, mistake, fraud; or

(13) To get any Government Waste or alluvial lands registered in one's name;

(14) Regarding any dispute about Boundary or Boundary marks, or regarding any matter for which a suit against State Government is or will be prohibited by any law in force or by Huzur order from time to time.

2. But nothing in the forgoing sections will prevent the Civil Courts from entertaining suits against State Government:-

to contest the amount claimed or paid under protest, or recovered as land Revenue on the ground that such amount is in excess of the amount authorised in that behalf by State Government or that such amount had previously been satisfied in whole or in partor that the plaintiff or the person whom he represents is not the person liable for such amount or that the property attached for such amount is not liable to attachment.

3. No Government Officer shall be liable to be sued for damages, for any act bonafide done or ordered to be done as such in pursuance of the provisions of any law for the time being in force

4. No suit shall lie against a Judge or any officer doing the work of administering Justice for any act bonafide done or ordered to be done by such Judge or officer in the discharge of his duties or any officer of the Court, or any person bound to execute a lawful order of such Judge or Officer for executing such order.

5. No suit shall lie against State Government or Government Officer on the ground that one is wrongfully dismissed from Government service.

6. No suit shall lie against Government or Government Officer for damages caused by omission in doing any act or for enforcing the doing of any act except when a special right to enforce the doing of such an act has been acquired.

P R O C E D U R E.

7. Suits against Government or a Government Officer, sued in his Official capacity can only be entertained and tried by District Courts having jurisdiction to try them or by a special or Panchayat Court, appointed by the Huzur for this purpuse, but no suit shall be entertained unless, the plaintiff first satisfies that he has presented all such appeals except to the Huzur, allowed by the law for the time being in force and that he has not preferred an appeal to the Huzur in respect of matter in suit.

8. (1) Special Courts will be established, and their local and monetary jurisdictions will be defined and settled by Huzur order from time to time. The Special Court shall try the suits being in its powers, in the local area for which it is established or shall give the plaintiff permission to institute that suit in the District Court.

(2) Where a special Court has been established no suit cognisable by such Court, can be entertained by a District Court without the permission of the special Court.

(3) When such permission is granted the special Court shall forward the papers in such suit to the District Court which

shall try the suit as if it was instituted in that Court in the beginning.

9. (1) When the special Court consists of more than one Judges and there is difference of opinion as to the result of the particular case and the Judges are equally divided in opinion the records of the case shall, in the absence of special Huzur order to the contrary, be forwarded to the Varishtha Court, it will be decided according to the order of that Court.

(2) The parties dissatisfied with the decision of the special Court are, in the absence of the special order to the contrary, at liberty to prefer an appeal to the Varishtha Court.

10 (1) Panchayat Courts will be established and their local and monetary jurisdictions will be defined and settled by Huzur order from time to time.

(2) If the decision of the Panchayat Court be unanimus a decree shall follow such decision, but if there be difference of opinion, the proceedings will terminate and the plaintiff will be at liberty to file his suit in a District Court of competent jurisdiction.

(3) Suits lying within the cognisance of the Panchyat Court can only be instituted in the District Court subject to the provision of subsection (2).

(4) The decree of the Panchayat Court shall be final.

5)When the proceedings will terminate under Subsection (2) the Records of the case shall be forwarded to the District Court of competent jurisdiction and the case will be tried by that Court as if it was filed in that Court in the beginning

1. If in any suit, instituted, the Court feels a doubt whether it is precluded from taking cognisance of the suit, it may refer the matter to the Varishatha Court. The VarishathaCourt may order the Court either to proceed with the case or to return the plaint.

2. Suits against Government or its officer sued in his official capacity shall be instituted in the name of the officer concerned with the subject matter of the suit, and his designation shall also be named.

3. No suit shall be instituted against Government or the officer, sued in the official capacity until the expiration of three months next after notice in writing delivered to or left at his office, stating the cause of action, the name and place of abode of the plaintiff and the relief which he claims, and the plaint must contain a statement that such notice has been so delivered or left.

4. The Court in fixing the day for the officer sued to answer to the plaint, shall allow a reasonable time for the necessary communication with the proper authorities for the ~~time~~ issue of instructions ~~of~~ to the Government Pleader to appear and answer on behalf ~~sued~~ of the said Government officer and may extend the time

at its discretion.

If the State Government officer after the receipt of summons wants time for the reasons noted above he may apply to the Court and the Court may grant or extend the time at its discretion.

15. No warrent of arrest shall be issued against any State Government Officer either during the pendency of the suit or in execution of the decree passed in such suit.

16. When the decree is passed against State Government or State Government Officer in his Official capacity a time shall be specified in the decree within which it shall be satisfied and if the decree is not satisfied within the time so specified the Court shall report the case to the State Varishatha Court for the orders of the Government.

If the decree remains unsatisfied for 6 months after the date of such report, the execution shall proceed according to the orders of the Varishatha Court.

17. The Legal Remembrancer is authorised to frame Rules if necessary in pursuance of the provisions of this Chapter.

Sd/-/11/47

V.M. Pathoji

Asst. Legal Remembrancer.

G. R. S. VI—G/32]

149

SUBJECT.....

.....

.....

Diary No. of letter replied to.....

General and Revenue Secretariat

( )

, the *191* .

Date of issue 20/5/22

Signed by K Cully.

Section

File No.

Serial No.

No. J 5302 (1)
9/22

To

M. Ramachandra Rao
Esq., B.A., B.L.,
Advocate & Member
Mysore Legl. Cl.

Sir,

I am directed to forward herewith a copy of the Bill to provide for Suits against Govt. & a Bill to amend the Civil Procedure code and to request you

over.

proposed to be introduced into the Legislature Council

D. O.

Government Advocate's Office,
Bangalore, 6th Sept. 1922.

Dear Sir,

With reference to your D. O. letter - dated the 29th ultimo, I beg to state that the - draft Bill to amend the Code of Civil Procedure appears to be all right.

In regard to the other draft bill, relating to suits against Government, I am of opinion that the language of section 2 as now proposed does not appear to be quite suitable.

For example, the words "as a sole defendant or as a co-defendant" appears to be unnecessary. The words "subject to the same defences and rights of appeal, revision and review as if the Government of Mysore was suable in the Courts of the State" appear also to be superfluous, as once the right is conceded and the -

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2.

necessary amendment is made in the Code of Civil Procedure, all the things follow - as a matter of course. The words "in the State" appear also to be unnecessary.

I would, therefore, modify section 2 of the present draft as follows:-

"2. Subject to the provisions of any - existing law which bar a suit, a suit against Government will lie in the following cases:-

(a) For the recovery of land, goods or money in wrongful possession of - Government or for compensation when restitution cannot be given;

(b) Claims on contracts, express or implied, including damages for breach of contract.

(c) For the recovery of duties paid by mistake or in excess.

(d)

(d) for rents and mesne profits.

(e) for the rectification or cancellation of any instrument.

(f) for compensation for injury to person or property caused by culpable negligence in any business concern managed by Government".

(Clause (g) of draft is put in as (f), - clause (f) being omitted).

Section 3 is all right.

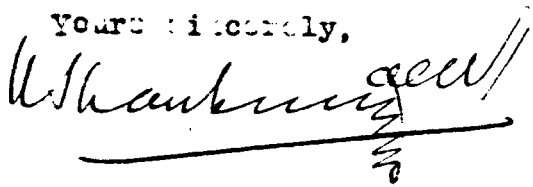
I am not in a position to see why clause (f) is put in, as I am not aware of any cases in which the Government has entered into partnership with any individuals or companies. - If the provision is, however, considered necessary, clause (i) may be retained.

I have no other suggestions to offer. -

The

. The draft Bills are enclosed.

Yours sincerely,



Mir Humza Hussain, Esq., B.A., B.L.,
Member of Council, Bangalore.

-: BILL FURTHER TO AMEND THE CIVIL PROCEDURE ~~CODE~~ Code :-

----***0***----

Whereas it is expedient further to amend the Code of Civil Procedure, 1911, His Highness the Maharaja is pleased to enact as follows:-

1. For the sub-heading of Part IV, the following sub-heading shall be substituted, namely --

" Suits by or against Government and Public Officers in their official capacity."

2. In Section 79 of the Code, the words "or against" shall be inserted between the words "by" and "the" in both the places.

3. After Section 79 the following new Section shall be inserted:-

" 79.-A. Suits against Government shall be instituted only in the District Court having jurisdiction to try them."

3.~~4.~~ (1)In Section 80 of the Code, between the words"against" and "a" occurring in the first line the words "Government, or" shall be inserted.

(2)For the words "been delivered to hi.." in the same Section, the following words shall be ~~in~~sub-stituted, namely "been in the case of Government delivered to, or left at the Office of the Chief Secretary to Government and in the case of a Public Officer, delivered to him."

4.~~5.~~ In Section 82 between the words"against" and "a" the words "the Government or" shall be inserted.

****

A Bill to provide for suits against Government.

Whereas it is expedient to provide for suits against Government His Highness the Maharaja of Mysore is placed to enact as follows:-

1. (i) This Regulation may be called "A Regulation to provide for suits against Government".

(2) It shall extend to the whole of Mysor and

(3) It shall come into force on.....

2. A suit to which the Government of Mysore is a party as a ~~sole~~ defendant ~~or a co-defendant~~ may be heard and determined by the principal Civil Court of Original jurisdiction having jurisdiction over the subject matter of the suit if the claim in respect o which the suit is brought is for any of the reliefs hereunder mentioned subject to the same defences and rights of appeal, revision and review as if the Government of Mysore was suable in the Courts of the State, provided that no such suit shall be entertained if it is barred by the provisions of any law or Regulation in force in the State:

(a) For recovery of land, goods, or money in ~~wrongful~~ unlawful possession of Government or for compensation when restitution cannot be given;

(b) ~~Claims on contracts, express or implied~~ for specific performance of contracts

(c) ~~including damages for breach of contract.~~ for damages for breach of contracts (when not provided)

(d) For recovery of duties paid by mistake or in excess.

(e) For rents and mesne profits.

(f) For the rectification or cancellation of any instrument.

(g) For a dissolution of partnership or for an account of partnership transactions.

(h) For compensation for injury to person or property caused by culpable negligence in any business concern managed by Government.

3. The provisions of Order XXXVIII and Rules 1 to 5 of Order XXXIX of the Code of Civil Procedure shall not apply to suits against Government.

G. R. S. VI—S-III/13]

DRAFT

SUBJECT.....

.....

.....

Diary No. of letter replied to.....

GENERAL AND REVENUE SECRETARIAT,

( )

, the.....*191*

Date of issue.....

Signed by.....

Section.
File No.
Serial No.

No. ..... dt.

NOTIFICATION.

Under Rule 31/32 of the Rules for the conduct of business of the Mysore Legislative Council, the accompanying.....is published for general information with the statement of objects and reasons.

By Order,

Secretary, Mysore Legislative Council.

(Here print the accompanying Bill with the statement of objects and reasons).

To

The Compiler, *Mysore Gazette* for publication in Part III of the Gazette in English and Kannada and for sending .....copies in English and.....copies in Kannada to this office. Proof should be sent to this office for approval before publication.

A Bill to provide for Suits against Government.

WHEREAS it is expedient to provide for suits against Government, His Highness the Maharaja is pleased to enact as follows:—

1. (i) This Regulation may be called "A Regulation to provide for Suits against Government."

(ii) It shall extend to the whole of Mysore, and

(iii) It shall come into force on .....

2. A suit to which the Government of Mysore is a party as a defendant may be heard and determined by the Principal Civil Court of original jurisdiction having jurisdiction over the subject matter of the suit, if the claim in respect of which the suit is brought is for any of the following reliefs:—

(*a*) for recovery of land, goods, or money in unlawful possession of Government or for compensation when restitution cannot be given ;

(*b*) for specific performance of contracts ;

(*c*) for damages for breach of contracts, express or implied ;

(*d*) for rents and mesne profits ;

(*e*) for the rectification or cancellation of any instruments ;

(*f*) for compensation for injury to person or property caused by culpable negligence in any business concern managed by Government.

3. Notwithstanding anything contained in the Code of Civil Procedure, no Civil Court shall take cognisance of any suit against Government except in regard to matters expressly provided for in this Regulation or in any other enactment for the time being in force.

DRAFT

SUBJECT .....

.....

.....

Section.
File No.
Serial No.

No. 425 / L.C. dt 26-11-32.

Diary No. of letter replied to.....

GENERAL AND REVENUE SECRETARIAT,

( )

, *the*.....191 .

Date of issue.....28/11/32.....

Signed by.....Sri. J. Appaji Gowda

NOTIFICATION.

Under Rule 91/32 of the Rules for the conduct of business of the Mysore Legislative Council, the accompanying Bill further to amend the Code of Civil Procedure, 1911 is published for general information with the statement of objects and reasons.

By Order,

Secretary, Mysore Legislative Council.

(Here print the accompanying Bill with the statement of objects and reasons).

To

The Compiler, *Mysore Gazette* for publication in Part III of the Gazette in English and Kannada and for sending ...75...copies in English and ...25...copies in Kannada to this office. Proof should be sent to this office for approval before publication.

Bill further to amend the Code of Civil Procedure. 13

WHEREAS it is expedient further to amend the Code of Civil Procedure, 1911, His Highness the Maharaja is pleased to enact as follows:—

1. For the sub-heading of Part IV, the following sub-heading shall be substituted; namely—

"Suits by or against the Government or Public Officers in their official capacity."

2. In Section 79 of the Code, the words "or against" shall be inserted between the words "by" and "the" in both the places.

3. (i) In Section 80 of the Code, between the words "against" and "a" occurring in the first line, the words "the Government, or" shall be inserted.

(ii) For the words "been delivered to him" in the same Section the following words shall be substituted, namely—

"been in the case of Government delivered to, or left at the Office of, the Chief Secretary to Government and in the case of a Public Officer, delivered to him."

4. In Section 82, between the words "against" and "a" the words "the Government, or" shall be inserted.

GBPM—300—7-10-22

SUITS AGAINST GOVERNMENT.

Statement of Objects & Reasons.

The members of the Representative Assembly have been urging since 1913 for the amendment of the Civil Procedure Code so as to provide for the institution of suits against Government. At present there is no provision of law which enables a subject of the State to file suits against Government, except in cases explicitly provided for in some of the Regulations such as the Land Revenue Code and the Land Acquisition Regulation. If there is a cause of action against Government, the aggrieved party has to file a suit only against the individual officer directly concerned in respect of the act purported to be done in his official capacity. A resolution was also moved on the subject in the Legislative Council.

2. ~~With a view~~ to concede the right of suits against Government for certain specified reliefs, the accompanying Bill was prepared and it was placed before the Representative Assembly, for discussion. The general principles of the Bill have been -- approved by the Representative Assembly.

3. The principle underlying this

this Bill is that the State is not suable in its own Courts except with ~~Its~~ its consent in respect of the administrative acts of - Government. ~~But~~ The activities of Government have considerably expanded in recent years and the Government have been running even commercial concerns, which bring them into business relationship with private persons. It is -- therefore considered that the time has come when the right of suit against Government has to be conceded to the subjects of the State in certain specified cases and the Bill enumerates the reliefs for which the right can be exercised. These reliefs have been selected from the list of cases in which suits against ~~Government~~ the Crown by way of Petition of right are permitted in England. The bill goes beyond this, in clause (f).

KNN.

Civil 134

~~CRIMINAL~~ PROCEDURE CODE.

Statement of obejcts & reasons.

This Bill provides for certain alterations in the Code rendered necessary by the right of suits -- against Government being conceded in the Bill to provide for suits against Government.

KNN.

G. R. S. VI—G/32]

135.

SUBJECT.....

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ISSUE & RESUBM

Section Legislative
File No. 99-29
Serial No 1

Diary No. of letter replied to.....

General and Revenue Secretariat

( )

, *the* 191 .

No. Pol 509 Encl 2

Date of issue 7 December 1922

To

The Secy to the Resident

(Bris)

Signed by Mr. P. Venkoba Rao

I am directed to forward herewith a copy each of the Bill to provide for Suits against Govt. and the Bill to amend the Civil Pro. code and to state that the Bills have been published under Rule 32

over.

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of the Rules of business
of the Legislative Council. ~~as the~~
~~Govt. are desirous~~
~~of enacting the measure~~
~~as early as possible.~~

The Bills will be
read in Council at
the next meeting of
the Legislative Council.

I have etc

~~Sd~~ [illegible]
~~For Secy~~
For Secy to Govt

List of enclosures.

Copied by

Examined by

Pol 748 Legs 6 F-74-2 137

C. O. 45.—R. P. B.—8-1921.—5,000.

No. 9810 ENCLOS. - Dated Bangalore, 13th December 1922.
dc-1901.

3044

FROM

E. Williamson, Esq., I.C.S.,

SECRETARY TO THE RESIDENT IN MYSORE.

To

The Secretary to the Government of Mysore,
General Department.

Reference ~~my~~ his letter telegram No. Pol.509, dated the 7th December 1922.

Subject: Bills to provide for suits against Government and to amend the Code of Civil Procedure, 1911.

The Resident sees no prima facie objection to the introduction of the above bills before the Legislative Council, as proposed. A reference to the Government of India is necessary and a further communication ~~may~~ will therefore, be awaited.

Williamson

Secretary to the Resident.

Secretary for perusal
1st 18/12 and make
20/12
SVR
27/12

G. R. S. VI.—s-III/11]

| 38

DRAFT.

SUBJECT.....

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.....

Section.
File No.
Serial No.

No. 634-42 / 2C / Gen. 1

Diary No. of letter replied to.....

To

X .....

Member, Mysore Legislative Council.

GENERAL AND REVENUE SECRETARIAT,

( )

, the.....*191* .

SIR,

Date of issue..... 28/2/23

Signed by..... M. Jois

I am directed to forward herewith a copy of the draft report of the Select Committee on the Bill to provide for suits against Govt. & the Bill to amend the Code of Civil Procedure ~~with a copy of the Bill as amended by the Committee~~ and to request you to kindly return the same with your approval or other remarks, if any, at an early date.

I have, etc.,

JKG

Secretary, Mysore Legislative Council.

X
1) K. Matthan ✓
2) M. C. Rangiengar ✓
3) M. Ramachandra Rao ✓
4) B. N. Krishnadeva ✓
5) D. Venkatesangh
6) H. Venkataramaya ✓
7) S. Paramasivaiah ✓
8) B. L. Ramaswamy Chetty.
9) K. Shankaranarayana Rao ✓

Sc
23/2/23.

Bangalore,
26th February 1923

From

B. V. Ramaswamy Chetty Esqr. B.A.
Member, Mysore Legislative Council.

To

J. Appaji Gowda Esqr. M.A. (Hons.)
Secretary, Mysore Legislative Council.

Sir,

I herewith return the draft report of the Select Committee on the Bill to provide for suits against Government and the Bill to amend the Code of Civil Procedure approved of and signed by me.

I have the honor to be,
Sir,
Your most obedient servant,

Member, Mysore Legislative Council.

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64, Balepet,

Bangalore City.

1st March, 1923.

From,

M. Ramachandra Rao, Esq., B.A., B.L.,

Member, Mysore Legislative Council, Bangalore.

To,

J. Appaji Gowda, Esq., M.A., (Hons.)

Secretary, Mysore Legislative Council,

BANGALORE.

Have you received replies from all the members of the Committee to whom we sent? JG 1/3

Sir,

I have the honour to acknowledge with thanks the receipt of your letter No.634-42 (1) L.C. dated the 23rd instant and its enclosure.

I have gone through the draft report and find it all right.

I herewith return the said draft with my signature.

I have the honour to be,

Sir,

Your most obedient servant,

M. Ramachandra Rao

G. PARAMASIVIAH, B.A., LL.B.
ADVOCATE

ARLEPET CHOWK
BANGALORE CITY

2 · 3 · 1923

147

Sir

I beg to return herewith the draft report of the Select Committee on the Bill to provide for suits against Government and Bill to amend the Civil Procedure Code.

Yours faithfully
G Paramasiviah

To,
The Secretary
Mysore Legislative
Council.

[illegible] report of the Select Committee on the Bill to provide for suits against Government and Bill to amend the Civil Procedure Code.

We, the undersigned members of the Select Committee to whom the Bill to provide for suits against Government and the Bill to amend the Civil Procedure Code have been referred, have the honour to report as follows:-

[illegible] to provide for suits against Government.- We recommend that the Bill be brought into force from the publication. We, the undersigned ones' are substitute the word 'or' at the end of this sub-clause.

Clause 5, Sub-Clause (c).- We consider that the word 'unlawful' may be substituted for the word "unlawful".

Sub-Clause (f).- The sub-clause as it at present reads is liable to the construction that the injured party may claim compensation for injury caused even in the ordinary course of the management of the concern. We do not intend to affect the position of servants other than that of private employer, we recommend that for the words "owner in any business concern carried on by him," the following words be substituted:- "duly authorized agent in the management of any industrial concern owned by him".

Bill to amend the Code of Civil Procedure.

Clause 3.- (1) We consider that in order to make the meaning clear the word "against" should be repeated and hence do we recommend that the word "against" be inserted after the words "the Government or".

In Sub-Clause (11) of the same clause we consider it necessary to insert comma after the word "born" and "Government" occurring the first line.

In clause 4 also the word "against" has to be inserted after the words "the Government or."

We consider that as the amendments are only few in number proposed by the new need not be published and recommend that the same be given effect to.

Approved
W. Macleod
6/

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G. R. S. VI.—S-III/9]

DRAFT.

150

SUBJECT.....

.....

.....

Diary No. of letter replied to.....

GENERAL AND REVENUE SECRETARIAT,
( )
, *the*.....*191* .

Date of issue.....

Signed by.....

Section.
File No.
Serial No.

No. 704 Dimensions L. C 97 13-3-23

NOTIFICATION.

Under Rule 40 of the Rules for the conduct of business of the Mysore Legislative Council, the following Report of the Select Committee on the Bill to provide for Enhanced Court Fees and the Bill to amend the C. P. C. is published for general information ~~with the Bill as amended by them.~~

By Order,

Secretary, Mysore Legislative Council.

To

The Compiler, *Mysore Gazette* for publication in Part III of ~~the~~ Gazette in English and Kannada and for supplying 100 spare copies in English and 25 copies in Kannada to this office. Proof should be sent to this office tomorrow for approval before publication.

Copy & Translation

Secretary

15/3/23.

151

NOTIFICATION.

No. 424—*L.C., dated* 28*th November* 1922.

Under Rule 32 of the Rules for the conduct of business of the Mysore Legislative Council, the accompanying Bill to provide for suits against Government is published for general information with the statement of objects and reasons.

By Order,
J. APPAJI GOWDA,
Secretary, Mysore Legislative Council.

A Bill to provide for Suits against Government.

WHEREAS it is expedient to provide for suits against Government, His Highness the Maharaja is pleased to enact as follows:—

1. (i) This Regulation may be called "A Regulation to provide for suits against Government."

(ii) It shall extend to the whole of Mysore, and

(iii) It shall come into force ~~on~~ at once.

2. A suit to which the Government of Mysore is a party as a defendant may be heard and determined by the Principal Civil Court of original jurisdiction having jurisdiction over the subject matter of the suit, if the claim in respect of which the suit is brought, is for any of the following reliefs:—

(*a*) for recovery of land, goods, or money in ~~unlawful~~ wrongful possession of Government or for compensation when restitution cannot be given;

(*b*) for specific performance of contracts;

(*c*) for damages for breach of contracts, express or implied;

(*d*) for rents and mesne profits;

(*e*) for the rectification or cancellation of any instrument;

(*f*) for compensation for injury to person or property ~~caused in any business concern managed by Government~~ due to wrongful act, neglect or default in the management of an industrial concern owned by Government.

3. Notwithstanding anything contained in the Code of Civil Procedure, no Civil Court shall take cognisance of any suit against Government except in regard to matters expressly provided for in this Regulation or in any other enactment for the time being in force.

STATEMENT OF OBJECTS AND REASONS.

At present there is no provision of law which enables a subject of the State to file suits against Government, except in cases explicitly provided for in some of the Regulations such as the Land Revenue Code and the Land Aquisition Regulation. If there is a cause of action against Government, the aggrieved party has to file a suit only against the individual officer directly concerned in respect of the act purported to be done in his official capacity.

2. It is proposed now to concede the right of suit against Government for certain specified reliefs, in the accompanying draft Bill. These reliefs have been selected from the list of cases in which Government consider it equitable that the right to sue should now be conceded

NOTIFICATION.

No. 425—L. C., dated 28th November 1922.

Under Rule 32 of the Rules for the conduct of business of the Mysore Legislative Council, the accompanying Bill further to amend the Code of the Civil Procedure, 1911, is published for general information with the statement of objects and reasons.

By Order,
J. APPAJI GOWDA,
Secretary, Mysore Legislative Council.

Bill further to amend the Code of Civil Procedure, 1911.

WHEREAS it is expedient further to amend the Code of Civil Procedure, 1911; His Highness the Maharaja is pleased to enact as follows :—

1. For the sub-heading of Part IV, the following sub-heading shall be substituted namely—

"Suits by or against the Government or Public Officers in their official capacity."

2. In Section 79 of the Code, the words "or against" shall be inserted between the words "by" and "the" in both the places.

3. (i) In Section 80 of the Code, between the words "against" and "a" occurring in the first line, the words "the Government, or" shall be inserted.

(ii) For the words "been delivered to him" in the same section the following words shall be substituted, namely—

"been in the case of Government delivered to, or left at the Office of, the Chief Secretary to Government and in the case of a Public Officer, delivered to him."

4. In Section 82, between the words "against" and "a" the words "the Government, or" shall be inserted.

STATEMENT OF OBJECTS AND REASONS.

This Bill provides for certain alterations in the Code rendered necessary by the right of suits against Government being conceded in the Bill to provide for suits against Government.

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NOTIFICATION.

No. 704—*L. C., dated* 13*th March* 1923.

Under Rule 40 of the rules for the conduct of business of the Mysore Legislative Council, the following Report of the Select Committee on the Bill to provide for suits against Government and the Bill to amend the Civil Procedure Code is published for general information.

By Order,
J. APPAJI GOWDA,
Secretary, Mysore Legislative Council.

Report of the Select Committee on the Bill to provide for suits against Government and the Bill to amend the Civil Procedure Code.

We, the undersigned members of the Select Committee to which the Bill to provide for suits against Government and the Bill to amend the Code of Civil Procedure had been referred, have the honor to submit this our report :—

Bill to provide for suits against Government.

Clause 1, *Sub-Clause* (iii).—We recommend that the Regulation may be brought into force soon after its promulgation. So, the words 'at once' are substituted for the word 'or' at the end of this sub-clause.

Clause 2, *Sub-Clause* (*a*).—We consider that the word 'wrongful' may be substituted for the word "unlawful."

Sub-Clause (*f*).—The sub-clause as at present worded is liable to the construction that the injured party may claim compensation for injury caused even in the ordinary course of the management of the concern. As it is not intended to make the position of Government worse than that of a private employer, we recommend that for the words "caused in any business concern managed by Government," the following words be substituted :—"due to wrongful act, neglect or default in the management of any industrial concern owned by Government."

Bill to amend the Code of Civil Procedure.

In clause 3 we consider that in order to make the meaning clear the word "against" should be repeated and hence we recommend that the word "against" be inserted after the words the "the Government or."

In sub-clause (ii) of the same clause we consider it necessary to insert commas after the word "been" and "Government" occurring in the first line.

In clause 4 also the word "against" has to be inserted after the words "the Government or."

We consider that as the amendments are only a few the Bills as amended by us need not be published and recommend that they be passed as thus amended.

MIR HAMZA HUSEIN.
K. MATTHAN.
M. C. RANGIENGAR.
M. RAMACHANDRA RAO.
B. N. VIJAYA DEVA.
H. VENKATARAMAIYA.
G. PARAMASIVIAH.
B. V. RAMASWAMY CHETTY.
K. SHANKARANARYANA RAO.

Note.—The approval of Mr. D. Venkatesaiya will be notified on receipt.

Cash. 22/3 Letter 22/3

KOLAR

DATED, 21st March 1923.

From

D. Venkatesaiya Esqr B. A., B. L.,

Member, Mysore Legislative Council.

To

C. Abdul Ghani Esq B.A. BL
Secretary, Mysore Leg. Council
Bangalore

Sir,

I have the honour to return herewith Copy of the Select-Committee Report on the Bill to provide for Suits against Govt., and the C.P.C. Regn. amendment bill, with my Signature affixed thereto Requiring my approval.

I have the honour, to remain

Sir,

Your most obedient Servant

D. Venkatesaiya
Advocate

G. R. S. VI—G/32]

156

SUBJECT.....

.....

.....

Diary No. of letter replied to.....

General and Revenue Secretariat

( )

, *the* 191 .

Date of issue 28/3/23

Signed by .....

Section

File No.

Serial No

No. 786 / 1 C

Notification.

To—

With reference to the foot-note to the report of the Select Committee on the Bill to provide for suits against Rent-and the Bill to amend the Code of Civil Procedure published with notification No 706/1.C dt 13th March it is notified that Mr. D. Venkatasaya

over.

157

Lords Justices signed the report.

By order

Asst
17.3
Secy. Legislative.

To
The Comptroller for publication
in part III

Cdg
20/3.
m
1913

List of enclosures.

Copied by

Examined by

Rec'd 5/4/23
cg

5001
P.

158

Camp: Hosur (S. Kanara)
3rd April 1923.

To

The Secretary
Bombay Legislative Council.
Bangalore

Sir,

I have the honour to send herewith an amendment to the C. P. Code tabled for the discussion at the coming Legislative Council.

I have the honour to be
Sir
Your most obedient servant
[illegible]
Member, Legislative Council
Kanara District

159

Amendments.

In the Bill to provide for suits against the Government and the Bill to amend the civil proceedure Code, I beg to move the following:--

Sub clause 'f" add the words "or managed" behind the word "owned" and before the word Government.

The sentence as amended will run thus:--

Due to wrongful act, neglect or default in the management of any industrial concern owned "or managed" by Government.

---oo0oo---

G. R. S. VI—G/32]

160

SUBJECT.....

.....

.....

Diary No. of letter replied to.....

General and Revenue Secretariat

( )

, *the* 191 .

Date of issue 1.5.23

Signed by Mr. C. Abdul Hamid, Sir,

Section Legis

File No. 61-24

Serial No. 3.

No. Pol 997 & 16

To The Secy to the Resident

With reference to your letter No 9810 of 10th Dec 1922 in the matter of Bills to provide for suits against Govt. & to amend the Code of Civil Procedure, I am directed to forward herewith 2 copies of

over.

the Bills together with
copies of the Select committee
report thereon and to
state that the report
of the Select committee
has been accepted by the
Legislative Council at
its meeting on the 16th April, 28

I have to request
that the sanction of
the Govt. of India may
be kindly obtained to
pass the Bills into law.

I have etc.

for Chief Secy.

List of enclosures.

Copies by

Examined by

Secy
Legislative
Dept
19/4

6096

C. O. 45.—R. P. B.—8-1921.—5,000.

No. 4644 Enclos. C-1901. Dated Bangalore, 14th June 1923.

14 JUN 19

From

A. H. L. Cater, Esq., I.C.S.,

SECRETARY TO THE RESIDENT IN MYSORE.

To

The Chief Secretary to the Government of
His Highness the Maharaja of Mysore.

Reference his letter No.Pol.997, dated the 1st May 1923.

Subject:—

Bill further to amend the Mysore Code of Civil Procedure, 1911, and a Bill to provide for suits against the Government of Mysore.

The Governor General in Council is pleased to accord his consent to the Bills on the understanding that he retains over them the power and authority which vest in him by virtue of Article 18 of the Treaty, dated the 26th November 1913.

for SECRETARY TO THE RESIDENT.

G. R. S. VI.—s-III/14]

163

DRAFT.

SUBJECT.....

.....

.....

Section. Legis
File No. 61-21
Serial No. 5

Diary No. of letter replied to.....

Proceedings of the Government of H. H. the Maharaja of Mysore.

Order No. 818 (1) 8/10-5

Ordered that the accompanying Regulation to provide for suits against Government which received the assent of His Highness the Maharaja, on the eighteenth day of July 1923, be published as Regulation No. VII of 1923, in the *Mysore Gazette* for general information.

GENERAL AND REVENUE SECRETARIAT,

( )

, *the*.....191 .

Date of issue..... 10/8/23

Signed by.....

Secretary to Government.

May this be—

(i) Printed?

(ii) Treated as a standing order?

(iii) Published in the "Gazette" English part?

(iv) Translated?

(v) Placed at the disposal of the Press?

(vi) Published in the "Gazette" Kannada part?

To

The Compiler, *Mysore Gazette*, for publication in Part III of the Gazette, in English and Kannada and for supply of .....spare copies in English, and .....spare copies in Kannada as per S.O ~~to this office, and.....spare copies in English and.....spare copies in Kannada to the Curator, Government Central Book Depot, Bangalore.~~ Proofs should be sent to this office for approval before publication.

Copy to Translation section

9/8/23

REGULATION VII OF 1923.

A Regulation to provide for Suits against Government.

WHEREAS it is expedient to provide for suits against Government, His Highness the Maharaja is pleased to enact as follows:—

1. (*i*) This Regulation may be called "A Regulation to provide for suits against Government."

(*ii*) It shall extend to the whole of Mysore, and

(*iii*) It shall come into force at once.

2. A suit to which the Government of Mysore is a party as a defendant may be heard and determined by the Principal Civil Court of original jurisdiction having jurisdiction over the subject matter of the suit, if the claim in respect of which the suit is brought, is for any of the following reliefs:—

(*a*) for recovery of land, goods, or money in wrongful possession of Government or for compensation when restitution cannot be given;

(*b*) for specific performance of contracts;

(*c*) for damages for breach of contracts, express or implied;

(*d*) for rents and mesne profits;

(*e*) for the rectification or cancellation of any instrument;

(*f*) for compensation for injury to person or property due to wrongful neglect or default in the management of any industrial concern owned by Government.

3. Notwithstanding anything contained in the Code of Civil Procedure, no Civil Court shall take cognisance of any suit against Government except in regard to matters expressly provided for in this Regulation or in any other enactment for the time being in force.

A. R. BANERJI,
Dewan.

G. R. S. VI.—S-III/14]

DRAFT.

- 165

SUBJECT.....

.....

.....

(8)

Section. Legs
File No. 61-21
Serial No. 6

Proceedings of the Government of H. H. the Maharaja of Mysore.

Diary No. of letter replied to.....

Order No. ...

Ordered that the accompanying... Regulation to amend The Code of Civil Procedure ...

which received the assent of His Highness the Maharaja, on the... eighteenth day of... July ... 1923, be published as Regulation No... V. I. II... of 1923, in the *Mysore Gazette* for general information.

GENERAL AND REVENUE SECRETARIAT,

( )

the.....*191*

Date of issue..... 10/8/23

Signed by.....

Secretary to Government.

May this be—

(i) Printed?

(ii) Treated as a standing order?

(iii) Published in the "Gazette English part?

(iv) Translated?

(v) Placed at the disposal of the Press?

(vi) Published in the "Gazette" Kannada part?

To

The Compiler, *Mysore Gazette*, for publication in Part III of the Gazette, in English and Kannada and for supply of .....spare copies in English, and .....spare copies in Kannada as per S.O ~~to this office, and.....spare copies in English and.....spare copies in Kannada to the Curator, Government Central Book Depot, Bangalore.~~ Proofs should be sent to this office for approval before publication.

Copy to Translation Section

REGULATION VIII OF 1923.

(Received the assent of His Highness the Maharaja on the eighteenth day of July 1923.)

A Regulation further to amend the Code of Civil Procedure, 1911.

WHEREAS it is expedient further to amend the Code of Civil Procedure, 1911 ; His Highness the Maharaja is pleased to enact as follows :—

1. For the sub-heading of Part IV, the following sub-heading shall be substituted, namely—

"Suits by or against the Government or Public Officers in their official capacity."

2. In Section 79 of the Code, the words "or against" shall be inserted between the words "by" and "the" in both the places.

3. (*i*) In Section 80 of the Code, between the words "against" and "a" occurring in the first line, the words "the Government, or against" shall be inserted.

(*ii*) For the words "been delivered to him" in the same section the following words shall be substituted, namely—

"been, in the case of Government, delivered to, or left at the office of, the Chief Secretary to Government and in the case of a Public Officer, delivered to him."

4. In Section 82, between the words "against" and "a" the words "the Government, or against" shall be inserted.

A. R. BANERJI,
Dewan.

FILE No. 61-21 OF 1921.

GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE.

PROCEEDINGS OF THE GENERAL AND REVENUE SECRETARIAT.

(*August* 1923.)

(LEGISLATION.)

SUBJECT—*Bill to provide for Suits against Government.*

"A Collection." Serial Nos. 1-6.

TABLE OF CONTENTS.

Serial No.	Number and date of letter and contents	Page in A Proceedings
1	Letter No. Pol. 509, dated 7th December 1922, to the Secretary to the Resident in Mysore. Forwards copies of Bills to provide for suits against Government and to amend the Code of Civil Procedure.	
2	Letter No. 9810, dated 13th December 1922, from the Secretary to the Resident in Mysore. States that the Resident sees no *prima facie* objection to the introduction of the Bills before the Legislative Council.	
3	Letter No. Pol. 997, dated 1st May 1923, to the Secretary to the Resident in Mysore. Forwards copies of the Bills and requests that the sanction of the Government of India be obtained for the passing of the Bills into law.	
4	Letter No. 4044, dated 14th June 1923, from the Secretary to the Resident in Mysore. Intimates that the Governor-General in Council accords his consent to the Bills..	
5	G. O. No. P. 818, dated 10th August 1923, to the Compiler, *Mysore Gazette* .. Ordered that the Regulation to provide for suits against Government which received the assent of His Highness the Maharaja, on the 18th July 1923, be published as Regulation No. VII of 1923.	
6	G. O. No. P. 819, dated 10th August 1923, to the Compiler, *Mysore Gazette* .. Ordered that the Regulation to amend the Code of Civil Procedure which received the assent of His Highness the Maharaja, on the 18th July 1923, be published as Regulation No. VIII of 1923.	

1921.

GENERAL AND REVENUE SECRETARIAT.

(LEGISLATIVE).

NOTES.

FILE NO. 61 OF 1921.

Bill to provide for Suits against Government.

NOTES AND ORDERS.

REPRESENTATIVE ASSEMBLY SUBJECT NO. 19.—1913.

Amendment to Civil Procedure Code.
Mr. C. Krishnamurthi, Law Association, Bangalore.

Summary of discussion.— The Civil Procedure Code may be so amended as to prescribe the procedure to be adopted when suits are filed against the Government.

Reply of Government.— Will be considered.

SUBJECT NO. 34.—1913

Suits against Government.
Mr. H. Narasinga Rao, Bar Association, Mysore.

Summary of discussion.— Suits against Government may be allowed as is done in some important Native States in India.

Reply of Government.—Noted.

1. When the Civil Procedure Code, now in force was under consideration, the question of including the provisions relating to suits against Government, was discussed and the decision was that such provisions were unnecessary.

2. The subject has been repeated this year also. [No. 4 (*c*) of General subjects.] Submitted for orders.

A. S.
17-9-14.

M. K.

3. This question was raised at the time of introducing the Civil Procedure Code. The First Member's Note is at p. 9 of the Printed Collection (Legis. 20—10). "Suits against Government are indirectly allowed as they can be filed against officers of Government."

4. The provision for suits against Government was found unnecessary. As the question has been repeated this year also, it may be better that a definite answer is given.

G. SRINIVASA IYER,
18-9-1914.

5. Perhaps it is better to give a reply to this effect at the meeting.

H. V. NANJUNDAIYYA,
24-9-1914.

EXTRACT OF SUBJECT NO. 4 (*c*).—1914.

Amendment of the Code of Civil Procedure.
(*c*) Messrs. A. Krishna Rao, Bar Association, Mysore.

(*c*) The Civil Procedure Code, may be amended by allowing suits against Government by private parties.

Reply of Government.– Noted for consideration.

Opinion of Mr. Chandrasekhara Aiyar, when informally consulted on the representation :

"This is a matter for Government."

The Chief Judge.—"....I have no opinion to offer."

Submitted for orders with a draft as per para 4 of the notes.

K. G.
23-2-1915.

G. SRINIVASA IYER.
23-2-1915.

7. But what is the exact difficulty which the proposers feel ? Please bring this up with the Code (Provisions marked) for personal discussion.

H. V. NANJUNDAIYYA,
26-2-1915.

8. From reports or otherwise, make as comprehensive a list as practicable of cases in which an Officer of Government (or Government) has been a Party and note whether the objection that Government was not to be sued was raised ; how far Government recognised the agency of the officer concerned. Revenue Code recognises suits against Revenue Officers. Are there any other provisions similar to this ?

9. Note all the indemnity Sections in Regulations, etc. ?

H. V. NANJUNDAIYYA,
23-3-1915.

G. SRINIVASA IYER,
23-3-1915.

10. A list of all the indemnity sections in the Regulations and a list of cases to which Government Officers were parties are submitted herewith.

11. Under the maxim that the Crown can do no wrong, the Crown in England is exempt from Criminal prosecutions and even for a Civil action in tort. In cases of debt or for damages for breach of contract or for the recovery of real or personal property, the subject has his remedy by a petition of right. But the agents of the Crown in England cannot claim complete immunity in respect of torts.

12. In British India, the question has been settled by the provisions of the Government of India Act 1858, under which a subject has the same remedies against the Secretary of State in Council as he might have had against the East India Company, if the Government of India Act, 1858, had not been passed. This difference in the law is due to the fact that the East India Company was only an ordinary trading company like any other subject of the Crown, and was exercising only certain restricted powers of Sovereignty. On the assumption of Sovereignty by the Crown, it waived its claim to immunity, and preferred to be in the same position in which the East India Company was. So the principles of law which govern suits of the kind in British India have no application to Mysore.

13. The analogy, if any, should be to the law in England and not to the law in British India. Further, as in England, even here there is nothing in the constitution to prevent individual officers being sued as such for any thing done by them in the course of their duties, and according to the standing orders of Government, the damages, if any, awarded will be paid by Government out of the public revenues. The subjects' remedies are not therefore affected in any way by the present law and procedure, and no change therefore seems necessary. If approved, draft to this effect will be submitted.

The words "Secretary of State for India" as explained by the High Courts, are nothing more than words indicating the mode by which the Government of India is to sue and be sued—a mode in which to reach the revenues of India, which cannot be reached by suit against an individual officer or department. (15. Ch. D. 1; and 14, Cal. 256.)

G. SRINIVASA IYER.
9th September.

List of cases to which Government Officers were parties.

Forest	..	68 of 1913 (1–3)
,,	..	35 of 1913 (1–10)
L. R.	..	176 of 1912 (1–4)
,,	..	410 of 1912 (3–4)
,,	..	186 of 1911 (1–2)
,,	..	240 of 1910 (1–6)
,,	..	344 of 1909 (1–2)
,,	..	113 of 1909 (1–3)
,,	..	,, (4–5)
,,	..	51 of 1909 (1–2)
,,	..	,, (3–4)
,,	..	302 of 1908 (1-2)
,,	..	318 of 1908 (1–8)
,,	..	243 of 1908 (1–7)
,,	..	169 of 1908 (1–2)
,,	..	162 of 1908 (1–2)
,,	..	196 of 1907 (1–2)
,,	..	108 of 1907 (1–2)
,,	..	70 of 1907 (1–2)
,,	..	35 of 1907 (1–2)
,,	..	,, (3–4)
,,	..	419 of 1906 (1–2)
,,	..	240 of 1906 (1–2)
,,	..	45 of 1906 (1–2)
,,	..	267 of 1905 (1–2)
Muzrai	..	138 of 1914 (1–2)
,,	..	457 of 1913 (1–2)
,,	..	149 of 1912 (5–8)
,,	..	171 of 1909 (1–39)
,,	..	136 of 1911 (1–2)
Education	..	27 of 1914 (7 and 10)
,,	..	207 of 1911 (1–2)
S. R.	..	135 of 1914 (1–2)
,,	..	27 of 1914 (1–3)
,,	..	53 of 1913 (1–2)
,,	..	45 of 1911 (11–12)
,,	..	22 of 1911 (6–12, 15)
Courts	..	94 of 1912 (1–9)
,,	..	221 of 1907 (1–4)
,,	..	98 of 1906 (1–2)
,,	..	67 of 1906 (1–2)
,,	..	292 of 1907 (1–7)
,,	..	41 of 1907 (1–6)
,,	..	198 of 1905 (1–11)
,,	..	121 of 1904 (10–11)
,,	..	209 of 1904 (1–2)
,,	..	,, (3–4)
,,	..	121 of 1904 (1–9)
Police	..	99 of 1915 (1–2)
,,	..	148 of 1912 (1–4)
Courts	..	321 of 1911 (1–2)
Police	..	214 of 1910 (1–6)
Regis.	..	16 of 1909 (1–2)
Police	..	44 of 1906 (1–3)
,,	..	115 of 1905 (1–2)
,,	..	16 of 1904 (1–2)
Special file No. 590 Serials 4.		
J. F.	..	64 of 1892.
L. F.	..	248 of 1892.
J. F.	..	241 of 1892.
J. F.	..	216 of 1892.
Local Board Branch	..	135 of 1892.
J. F.	..	39 of 1896-97.

A statement of indemnity sections in the enactments in force in Mysore.

	Name of Regulation.	*Number of Sections.*
1.	Act V of 1861 (Police Act) Repealed by Police Regulation V of 1908	Section 22 (6) ? 80 ? Section 81.
2.	Act III of 1877 (Regis.) Repealed by Registration Regulation I of 1903	Section 86, 87.
3.	Regulation No. IV of 1888 (Mysore Land Revenue Code) ..	Section, 223, 225 and 230.
4.	Regulation I of 1892 (Merchandise Marks Regulation.) ..	Section 18.
5.	Regulation IV of 1894, (Mysore Railway Regulation) ..	Section 15 clause (5).
6.	Regulation XI of 1900, (Forest Regulation).	Section 53, 66, 67 and 81.
7.	Regulation V of 1901, (Excise Regulation)	Section 72.
8.	Regulation VIII of 1901, (Regulation to amend the Indian Evidence Act of 1872)	Section 8.
9.	Regulation II of 1902, (Local Boards Regulation) ..	Section 37, 38 and 39.
10.	Regulation III of 1903, (City of Mysore Improvement Regulation)	Section 46.
11.	Indian Penal Code	Section 77, 78, 79, 80, 81, 87, 88, 92, 93, 94 and 95.
12.	Mysore Tramway Regulation II of 1906	Sections 40 and 41.
13.	Regulation No. VII of 1906, (Regulation for the better management of Municipal Affairs in Mysore) ..	Sections 2, 38, 167.
14.	Village Offices Regulation IV of 1908	Section 16.
15.	Treasure Trove Regulation III of 1910	Section 18.
16.	Tank Panchayat Regulation I of 1911	Section 20.
17.	Civil Procedure Code Regulation III of 1911	Sections 70 (2) ? 71 ? Sections 80, 81, 82, 152 A.
18.	Regulation No. I of 1912, (Regulation for the Protection of Judicial Officers)	
19.	Mysore Factories Regulation III of 1914	Section 55.

14. Yes. We may say: "Government do not consider that any change in the existing law is necessary. Parties have ample facilities for obtaining redress otherwise than by way of a suit instituted against Government as such."

15. Draft accordingly and submit to Dewan.

K. S. CHANDRASEKHARA IYER,
12-9-1916.

16. Draft at once.

G. SRINIVASA IYER,
12-9-1916.

17. Draft put up.

N. N.
13-9-1916.

18. For favour of Dewan's kind approval.

G. SRINIVASA IYER,
13-9-1916.

19. Please bring up at a meeting of council.

M. VISVESVARAYA,
17-3-1917.

Opinion of the Council.

20. A copy of the Judgment of the Chief Court in a recent case (Mysore Land Acquisition case) may be obtained.

21. The practice in some of the more important Native States may be ascertained.

22. A note upon the expediency of the proposed measure may be prepared and submitted.

M. KANTARAJA URS,
12-7-1917.

23. Draft.

G. SRINIVASA IYER,
12-7-1917.

24. Submitted with two drafts
A. S. R.
17-7-1917.

25. Issue.

G. SRINIVASA IYER,
19-9-1917.

Letter No. J. 236, *dated* 21*st July* 1917, *to the Registrar, Chief Court.*

Calls for a copy of the Judgment of the Chief Court in the recent Mysore Land Acquisition case, brought by Mr. M. Murthi Rao, against the District Judge, Mysore.

Letter No. POL. 72, *dated* 21*st July* 1917, *to the First Assistant to the Resident.*

Requests to ascertain for the Durbar, the practice obtaining in the matter in the Native States.

Letter No. D. Dis. 79, *dated* 31*st July* 1917, *from the Registrar, Chief Court.*

Forwards copy of Judgment of the Chief Court in Regular Appeal No. 230 of 1915-16, against the decree of the District Judge in the Mysore Land Acquisition Case.

26. Submitted. The Residency reply may be awaited.

G. SRINIVASA IYER,
10-8-1917.

Letter No. 6792, *dated* 3*rd September* 1917, *from the First Assistant to the Resident.*

Forwards copy of letter No. 2860—J., dated 28th August 1917, from the First Assistant to the Resident, Hyderabad and states that the replies of the other Durbars will be communicated when they are received.

Letter No. 7067, *dated* 13*th September* 1917, *from the First Assistant to the Resident.*

Forwards copy of letter No. 2204, dated 2nd September 1917, from the Resident in Travancore and Cochin in continuation.

27. Submitted for perusal. Replies from Baroda and Indore are due.

G. SRINIVASA IYER.
22-9-1917.

Letter No. 9549, *dated* 18*th December* 1917, *from the First Assistant to the Resident*

Forwards a Memorandum prepared by the Assistant Legal Remembrancer, Baroda, summarising the provisions of the Baroda Civil Procedure Code, dealing with suits against the State and State servants.

28. Submitted. Reply from Indore may be awaited.

N. N.
22-12-1917.

29. Yes.

G. SRINIVASA IYER,
7-1-1918.

Letter No. 435, *dated* 18*th January* 1918, *from the First Assistant to the Resident.*

Forwards the Indore Rules.

30. Submitted with reference to the 'opinion of the Council' on page 4 of these notes.

31. The Judgment of the Chief Court and the Rules in the undermentioned Native States have been received.

Hyderabad.
Travancore.
Cochin.
Baroda.
Indore.

N. N.
23-1-1918.

32. Please put up a Draft Bill, on the Baroda Model with suitable alterations.

P. MAHADEVAYYA,
7-1-1920.

33. Submitted with a draft bill with statement of objects and reasons on the Baroda Model as directed.

34. The subject matter exempted from the cognisance of the Court in such cases is provided for in S. 221 of the Land Revenue Code. Hence that clause is not included in the Draft Bill.

Submitted for orders.

A. S. R.
31-3-1920.

35. Please put up a typed copy of the Bill and Statement of objects and reasons.

P. MAHADEVAYYA,
6-4-1920.

36. Typed copy is submitted.

A. S. R.
12-4.

37. Kind reference is invited to the Council dicision, dated 12th July 1917, calling for a note upon the expediency of the proposed measure. The necessity for legislation does not seem to have been definitely decided, though the reply of Government to the representation in the Representative Assembly, was that materials were being collected for preparing a Bill.

38. This question was raised at the time of the amendment of the Civil Procedure Code, in 1910 and incidentally a query was also raised—which has not been answered—whether this is a matter touching His Highness' prerogative and as such outside the purview of the Legislative Counicl (*vide* query on the margin in small types in p. 4 of the A Collection).

This does not seem to fall under the proviso to S. 12 of the Legislative Council Regulation.

39. The Council decision on the 5th and 6th April 1910, was that no change in the existing law was necessary.

40. Kind reference is also invited to the following opinion of Mr. K. S. Chandrasekhara Aiyar, the then Second Member of Council, recorded on p. 3 of the notes :—

"Government do not consider that any change in the existing law is necessary. Parties have ample facilities for obtaining redress otherwise than by way of a suit instituted against Government as such."

41. The law in British India in this respect is in a peculiar position. There a subject can sue the Secretary of State for India, in all those cases in which the East India Company were liable to be sued, and this is a privilege allowed by the Crown on the assumption of Sovereignty.

42. Hence the question does not seem to be free from difficulty. The British Indian model cannot be followed and we have to look to English law for an analogy. In what respects and to what extent suits may be allowed to lie against Government are matters relating to substantive law, and it is not clear whether it is intended to pass an original enactment on the subject.

43. In England, suits against Government are instituted by means of what is known as a 'Petition of Right', which is the process by which property of any kind (including money or damages) is recovered from the Crown, whether the basis of the claimant's title be legal or equitable.

Petition of Right lies in the following cases:—

(*a*) To obtain restitution of real or personal property of the subject which has found its way into the hands of the Crown, or compensation of restitution cannot be made;

(*b*) To recover damages for breach of a contract made on behalf of the Crown, whether the breach is due to the acts or the omissions of servants of the Crown.

Petition of Right does not lie:—

(1) in respect of engagements in the naval, military, or civil services of the Crown, which are as a general rule made "during pleasure";

(2) nor for breach of public duty, *e.g.*, failure to perform treaty obligations;

(3) nor for trespass or negligence or other torts by Crown Servants.

Where such acts are wrongful, the remedy is by action against the official as an individual and not in his official capacity.

44. *Since the King can neither do nor authorise a wrong*, a petition of right will not lie for damages for a tort alleged to have been committed either by the Crown or by a servant of the Crown, acting by the Crown's authority. On this principle a petition of right will not lie for the alleged infringement of a patent by the Crown or its servants.

45. The procedure is regulated by the Petition of Right Act, 1860 (23 and 24, Vict. C. 34) and rules framed thereunder on the 1st February 1862. According to these the petition must be left with the Home Secretary for submission to the King, with a view to its receiving the fiat if the King thinks fit. The King may grant or refuse his fiat at his pleasure, and it cannot be said to be absolutely the duty of the Attorney-General to advise the grant of the fiat in every case where the petition discloses a reasonable and probable ground of claim. Until the fiat has been granted the petition cannot be set down for trial.

46. The claims which can be made by petiton of right are more limited in nature than those which can be made in proceedings between subject and subject. The fact that the fiat of the Sovereign has to be obtained renders it necessary that the petition should show clearly on the face of it a claim of such a nature that the Crown's advisers can advise the Sovereign to allow it to proceed. "The proceeding by petition of right exists only for the purpose of reconciling the dignity of the Crown and the rights of the subjects, and to protect the latter against any injury arising from the acts of the former; but it is no part of its object to enlarge or alter those rights."

47. It will be seen from the above that the English remedy by petition of right is really very much limited in its scope and hedged in by rules and restrictions. If it is decided to grant a similar remedy in Mysore, it is a point for consideration and orders in what respect and to what extent the right should be conceded, and whether the permission of His Highness, or the Dewan, or the Judicial Member of Government, should be insisted on as a condition precedent to the institution of a suit corresponding to the King's fiat in England.

48. Kind reference is also invited to the judgment of the Chief Court, in Murti Rao's case in which they have expressed the opinion that the law does contemplate some suits against the Government, *i.e.*, against the State or the Crown and that the Legislature should provide some procedure for use in those suits. It is a point for consideration whether Chief Court may not be addressed in the matter and requested to give their opinion whether it is enough if some procedure is prescribed for such suits as are now recognised or whether they consider it desirable to pass an original enactment generally allowing suits against Government.

49. Copies of the provisions of law existing in Indore, Baroda, Travancore, Cochin and Hyderabad, have been obtained and put up. It will be seen therefrom that it is only in Hyderabad that an original enactment has been passed providing for the

appointment of a special committee, etc., if considered necessary by the Prime Minister who is empowered either to grant or refuse permission for the institution of suits against Government.

50. A memorandum prepared by the Assistant Legal Remembrancer, Baroda, has been received which contains a summary of the provisions of Part II, Chapter 44 of the Baroda Civil Procedure Code, and also provides for the establishment of special courts for trying suits against Government.

51. The matter being very important, it seems desirable to invite the opinion of the Judges of the Chief Court before further action is taken.

Submitted for orders.

P. MAHADEVAYYA,
28-9-1920.

52. Before consulting the Chief Court, it seems to be desirable for Government to indicate the main lines of the proposed legislation as for instance— whether all kinds of suits are to be allowed or only a restricted remedy is to be provided ; whether any preliminary application to Government and sanction of any authority is necessary or whether mere notice of suit is enough and so on. When these points are indicated a kind of draft bill may be prepared and opinions of the Chief Court, Government Advocate, etc., invited thereon.

53. So far as I can see, it seems best to have a separate regulation for the purpose rather than to amend the Civil Procedure Code. It is desirable also to have a procedure based on the English analogy— which Hyderabad appears to have followed—though the actual trial of suits allowed to be filed may take place in the ordinary courts.

54. It is desirable to define the classes of suits that may be allowed, either positively or negatively.

C. S. BALASUNDARAM IYER,
4-10-1920.

55. People will not be satisfied with a half measure of the kind proposed by the Chief Secretary. What they want is complete freedom to sue the Government for any illegal act that they might in the opinion of the aggrieved party have committed and to test the validity of the Government orders in a court of law and to prevent the Government Officers by an injunction from taking action under them. It is impossible to give them such right unless there is provision made and machinery created for appeals from the decisions of the Chief Court. For if such wide powers be given questions of constitutional law of vital importance to the State will arise which cannot be left entirely to the decision of the Chief Court without proper safeguards. In British India, there is provision for appeal to the Judicial Committee from the decision of the High Court in certain cases and the judgments of the Privy Council in very many cases show that the High Courts in British India though presided over by eminent judges are not infallible. I would therefore recommend the establishment of a Supreme Court of appeal in Mysore if the restricted freedom of suit is to be allowed in Mysore. If that is not to be given, I would allow a suit to be instituted against the Government in all such cases in which a Petition of Right will lie in England. A list of such cases may be made and care may be taken to see that suits in which the validity of the orders of the Government can be questioned are excluded from the cognisance of the Civil Court. If this is done, I do not think that it is necessary to retain the provision of the English Law that before a suit is filed permission of the Home Secretary should be taken.

56. The matter may again be placed before the Government in accordance with the resolution of the Council, dated the 12th July 1917.

MIR HUMZA HUSEIN,
11-10-1917.

57. Please put up a standard work on "Petition of Rights" if available.

P. MAHADEVAYYA,
14-10-1917.

58. Book III of Civil Proceedings by and against the Crown by George Stuart Robertson deals with Petition of Rights. The book is herewith put up and submitted.

B. M.
23-10-1917.

59. Kind reference is invited to the Orders of the Third Member in para 55 above suggesting the institution of a suit against Government in all such cases in which a Petition of Right will lie in England and calling for a list of such cases.

Definition.

60. A petition of Right is the process by which recovery is made from the Crown of property of any kind, including money, to which the suppliant is legally or equitably entitled, except in cases where this process is ousted by some Statutory method of recovery. Civil Proceedings by and against the Crown by G. S. Robertson. P. 331.

61. A simpler definition is that given by Walter Clode in his book on " Petition of Right " which is as follows :—

A Petition of Right is a petition presented by a subject to the Crown stating some infringement of the suppliant's legal rights by the Crown or its officers and praying redress therefor.

Note.

The person presenting the petition is usually called the " Suppliant ", and the answer given by the crown " the endorsement " or " fiat."

62. The remedy by Petition of Right arises only where the rights of the Crown are *directly* in question, for, where they are only *incidentally* concerned in an action, the Attorney-General may be made a defendant as representing the Crown.

63. The cases in which a Petition of Right is available are :—

(1) Where the land or goods or money of a subject have found their way into the possession of the Crown, and the purpose of the petition is to obtain restitution, or, if restitution cannot be given, compensation in money ;

(2) Where a claim arises out of a contract, as for goods supplied to the Crown or to the public service ;

(3) To compel payment of annuities granted by the Crown ;

(4) For a pension out of the Civil List, at the suit of an assignee ;

(5) For a mere money claim ;

(6) For the return of overpaid probate duty ;

(7) For a rent-charge ;

(8) To recover hereditaments ;

(9) To enforce an agreement for a lease granted by the Crown ;

(10) For a declaration of what is due under a contract with the British Admiralty contained in letters ;

(11) For breach of contract, even though resulting in unliquidated damages ;

(12) To recover money claimed either by way of debt or by way of damages on breach of contract ;

(13) Whether the breach of contract complained of be occasioned by the acts or by the omissions of the Crown officials, or arise otherwise in respect of matters of contract ;

Note.—(*a*) In a Petition of Right, case compensation was claimed and awarded against the Postmaster-General, under Section 7 of the Telegraph Act, 1863, for damage caused in the course of the laying down of certain telephone wires.

St. James and Pall Mall Electric Light Co., Ltd., *Vs.* R., (1904) 73, L. J. K. B. 518.

(*b*) In another case of Petition of Right the suppliants recovered damages from the Crown for breach of contract caused by the refusal of the Admiralty to accept the whole of two millions of stone which the suppliants were bound by their contract to deliver " as required " for the construction of Portland New Breakwater.

Stewards and Co., Ltd., *Vs.* The Queen (1900) 16. T.L.R. 153.

Encyclopedia of the Laws of England (2nd Edition), Vol. XI, pages 97 and 98.

Other Instances given by Clode.—According to Clode, a Petition of Right is available in the following cases also :—

(14) Corodies.

Note.—A corody is an allowance in money or food payable by religious houses to the King their founder for the sustenance of his servants. This was successfully discharged after suit by Petition of Right to the Crown.

(15) Advowsons ;

(16) Seigniories ;

17 Gales ;

Note.—A Gale is a grant from the Crown in fee simple, subject to certain conditions, of tracts of coal or iron ore or stone lying under the forest paying only a royalty therefor.

(18) As regards the question whether in the case of a specific chattel lost or destroyed, its value in money may be recovered, the following dicta are held to be in favour of the subject's recovering the value : —

(i) The Court of Common Pleas have decided that a Judgment in favour of the suppliant upon petition of right " enabled him to recover possession of specific property, *or the value thereof, if it had been converted to the kings ' use.*"

Tobin. *Vs.* Reg. 16 C.B. (N.S.) 310, at page 358.

(ii) The Court of Queen's Bench repeated this opinion with additions when, in summing up the cases in which the remedy by petition was available, they included those in which the purpose of the petitioner is to obtain " *compensation in money* " if restitution (in specie) cannot be given.

Feather *Vs.* Reg. C.B. & S. 257.

(19) Money paid to the Crown under a mistake ;

(20) Mesne profits ;

(21) Salary.

Petition of Right by Clode, pages 73-95.

Petition of Right in Equity.

64. Since the passing of the Petition of Right Act, 1860, several petitions of right have been presented claiming relief against the Crown upon equitable grounds.

65. Again, under the Petition of Right Act, a petition of right may be instituted in the Probate, Divorce, and Admiralty Division, in case the subject-matter of the petition or any material part thereof arises out of the exercise of any belligerent right on behalf of the crown, or would be cognizable in a Prize court if the same were a matter in dispute between private persons.

66. Lastly, by 40 and 41 Victoria C.59, S.20, a petition may be brought by any person claiming to be interested in any colonial stock or dividend thereon to which that Act applies.

67. It may perhaps be useful to add the classes of cases in which a Petition of Right will not be available. The following is a list of cases in which a Petition of Right will not lie :—

(1) Where a petition of right does not disclose some legal right capable of being enforced against the king in some municipal court ;

(2) In respect of a claim founded upon tort ;

(3) Nor for compensation for a wrongful act done by a servant of the crown in the supposed performance of his duty ;

(4) Nor against the succeeding sovereign for injuries sustained in the preceding reign ;

(5) Nor to obtain payment of a debt due to a British subject from the subject of a foreign Government out of a sum of money received by the British Government from the foreign Government on account of debts due from its subjects to British subjects ;

(6) Nor to recover from the crown, out of a fund paid under a treaty with a foreign power, as compensation for debts due to British subjects, the payment of an amount claimed in respect of one of such debts ;

(7) Nor where the claim was for compensation on being compulsorily retired upon half pay from a civil or military office alleged to be permanent ;

(8) Nor for an increase of a superannuation allowance ;

(9) Nor for damages for an infringement of a patent right ;

(10) Nor for repayment of income-tax ;

(11) Nor for debts due from an Indian reigning prince before the annexation of his province by the East India Co. ;

(12) Nor in respect of financial liabilities incurred by a conquered state before the outbreak of the war resulting in its conquest ;

(13) Nor for payment, to the persons entitled, of booty granted by the Crown to the Secretary of State for India, in trust for the officers and even of certain forces, and to be distributed according to certain scales and proportions ;

(14) Nor for lands in a colony which have been vested in the Crown by an Act of the provincial legislature.

Encyclopedia of the Laws of England, Vol. XI, pages 98-99.

Next as to the liability of the Crown in respect of wrongs.

68. Neither an action nor a Petition of Right lies against the Crown for a wrong committed by its servants.

69. The remedy open to a person injured by a servant of the crown in the course of his service is an action against the person who has actually done or taken part in doing the wrongful act which has caused damage.

70. But, speaking generally, no injustice results from this, for the Crown, *i. e.*, the Government usually pays damages awarded against a servant of the state for a wrong done in the course of his service. Actions, for instance, have been constantly brought against Officers of Royal Navy for damage done by collisions with other ships caused by the negligence of such officers. The damage recovered against the officer is almost invariably paid by the Admiralty.

71. It would be an amendment of the law to enact that a Petition of Right should lie against the Crown for torts committed by the servants of the Crown in the course of their service. But the technical immunity of the Crown in respect of torts is not a subject of public complaint, and in practice works little, if any, injustice.

72. It should be further remembered that much business which in foreign countries is carried on by persons who are servants of the State is in England transacted by corporate bodies, e.g., Railway Companies, Municipal Corporations, and the like, which are legally fully responsible for the contracts made on their behalf or wrongs committed by their officials or servants in the course of their service.

Vide Lowell's "Government of England," Vol. II, pages 490-494.

73. In view of the importance of the subject, it may perhaps be interesting to state the law prevailing in the other European countries.

Other European Countries.

On the continent the rule is that the Government is liable to be sued by an individual in contract and also in tort, where the tortious act is not committed in the performance of functions of a distinctly public legal character and where the fault of the officer causing it is not purely personal to himself but consists rather in bad service, in an order badly given, not understood, or imprudently or carelessly executed. Thus the Government would not be held responsible for damages caused by its agents in the collection of taxes while it would be if a ship were injured by the negligence of the officers of one of its men-of-war. An example of the purely personal act of one of its agents for which the Government would not be responsible would be found in the case of theft by him. While the general rule as to the responsibility of the Government for its contracts and torts is the same in France and Germany, the courts before which such suits should be brought are different.

France.

In France, while the common law rule in the absence of statute would appear to be that the ordinary civil courts have jurisdiction, so many special statutes have, as a matter of fact, been passed giving the jurisdiction to the administrative courts that it is laid down as the rule that the administrative courts are alone competent to declare the Government a debtor.

Germany.

In Germany, however, it is the ordinary courts which have jurisdiction of actions both in contract and tort against the Government. The German rule as to the court which has jurisdiction of these cases against the Government is considered to be by far the more logical, since the whole responsibility of the Government is based upon the theory of its juristic personality, and of its capacity to enter into private legal relations of all sorts and the consequent possibility of its being held responsible before those courts which have in their hands the application of the private law. The reason for the adoption of the French Rule is largely historical and is to be found in the great desire at the time of the revolution to free the administration from the control of the ordinary courts, which had shown themselves too anxious to protect vested rights and hamper the administration in the carrying on of the necessary reforms. In both France and Germany the general rules as to the responsibility of the Government before the courts are sometimes modified by special statutes. Thus in France the responsibility of the Government for damages resulting from the carelessness of the agents of the postal and telegraph service is very much limited and the action is to be brought before the ordinary courts. In Prussia, the Government is made responsible for the negligence

of its registrars of deeds and mortgages, notwithstanding the fact that the registration of land titles is evidently a public legal rather than a corporate or private legal act.

As to the Responsibility of Officers of Government.

74. " In England the idea of legal equality, or of the universal subjection of all classes to one law administered by the ordinary courts, has been pushed to its utmost limit. Every official, from the Prime Minister down to a constable or a collector of taxes, is under the same responsibility for every act done without legal justification as any other citizen. The Reports abound with cases in which officials have been brought before the courts, and made, in their personal capacity, liable to punishment, or to the payment of damages, for acts done in their official character but in excess of their lawful authority. A colonial Governor, a Secretary of State, a military officer, and all subordinates, though carrying out the commands of their official superiors, are as responsible for any act which the law does not authorise as is any private and unofficial person "

Prof. Dicey's " Law of the Constitution "; page 189.

75. This is the most recent statement of the law made by a writer of great authority and reputation. It constitutes the fundamental rule of English law and has the merit of enforcing a far more strict adherence to law than is possible within the limits of any other system.

76. It will be seen from the above that the courts exercise an enormous power over the acts of the administration. Because, any act of any officer may give rise to a complaint which the courts have to decide. Prof. Goodnow, however, points out that in deciding these complaints the courts delimit the sphere of administrative competence in all its details in that they settle what is the jurisdiction of all officers of the Government. What the actual extent of this control shall be, depends, however, upon the attitude of the courts. They may pass upon every act of every officer or they may limit their power by their decisions in the interest of an efficient administration, may leave something to administrative discretion which they will not attempt to control. This has been the tendency of their decisions both in England and the United States. In both countries they have, in the first place, made it practically impossible to sue in damages the most important officers of State, *i.e.*, the heads of executive departments in both countries and in the United States, also the President and the Governors. Mr. Todd says (Parliamentary Government, Vol. I., pages 494 and 495) :—

" It may be stated as a general principle, that in assuming on behalf of the Crown a personal responsibility for all acts of the Government, ministers are privileged to share, with the crown, in a personal immunity from vexatious proceedings by ordinary process of law, for alleged acts of oppression, or illegality in the discharge of their official acts .....whether the alleged liability arises out of contract or out of tort, or from any matter of private individual complaint against a minister of the Crown, for acts done in his official capacity, the ordinary tribunals of justice will afford him special immunity and protection."

77. This does not mean that in no possible case can a suit be brought against a minister, but only that the courts are very careful not to extend their control so as to hamper the administration of public business by the ministers.

78. In the United States, the rule is practically the same.

79. A second limitation which the courts have placed upon their control over the action of the administration, through their power to delimit its sphere of competence, is to be found in the rule, that purely ministerial officers will not be held responsible for damages where they have followed instructions which are legal on their face and contain nothing which will apprise the subordinate that they have been issued illegally, and are not within the jurisdiction of the superior who issued them. The weight of authority seems to be further in favour of the rule that a ministerial officer is relieved for the execution of orders fair on their faces, even if he is satisfied that there are illegalities lying back of them. The English law has gone further than the law of the United States and has offered to officers, who are not ministerial in character, quite a large immunity from suits at the hands of individuals by making their defence very much easier.

Lastly, Classification of officers into Judicial, Legislative Executive and Administrative.

80. The responsibility of officers for damages before the courts is in neither the English nor the American law confined to the cases in which they have acted out of their jurisdiction. In many cases officers may be held responsible for damages arising from the non-performance or negligent performance of duties within their jurisdiction, or from bad faith. Here the courts have been guided in their formulation of the rules of their control over officers, by the character both of the officer and of the duties which he has to perform and which the court undertakes to control. Officers are for this purpose divided by the courts into judicial, legislative, and executive officers. In addition to these three classes of officers, there is a fourth class of officers whose development has taken place during this century and whose duties partake of the characteristics of those of the three other classes of officers. These officers are called administrative officers. Such are the American Supervisor and county commissioner and the English county councillor. Of these various classes of officers it may be said, in the first place, that purely judicial officers, *i.e.*, officers that hold courts and decide cases of criminal and private law, and legislative officers will not be held civilly responsible for damages ; no matter how gross their negligence may be, nor what may be the character of the act giving rise to the damages, provided it is within their jurisdiction. The responsibility of executive and administrative officers depends, however, largely on the character of the act which has caused the damage. If the duty, in the performance of which the act causing the damage was done, is discretionary in character, the general rule is that executive and administrative officers may not be made responsible since the courts do not like to interfere with the discretion of the administration. When, however, the duty is purely ministerial such officers may be held responsible by the courts for their negligence or mal-performance of such duty.

Vide Comparative Administrative Law.
By Prof. Goodnow, pages 161-168.

81. In case it is decided to allow suits against Government and frame an enactment in this respect, the following questions seem to deserve consideration and orders :—

(i) Is the right to be open to those who are not the subjects of His Highness ?
(ii) Can a person residing out of Mysore be permitted to sue ?
(iii) Is the suit to abate on the death of the plaintiff ?
(iv) What procedure should be followed upon the death of one of two joint plaintiffs ?
(v) Is the right of suit assignable ?
(vi) What is to be the period of limitation within which a suit has to be filed ?

82. The following powers may perhaps be taken in the enactment to be framed: —

(*a*) Power to change the court, if necessary, in which the suit will be prosecuted ;
(*b*) Power to extend the practice and course of procedure in suits between subject and subject, to suits against Government, so far as applicable ;
(*c*) Power to be reserved to Government to make rules and regulations.

Vide Sections IV, VII & XV of the Petition of Rights Act,

1860.

Submitted for Orders,
P. MAHADEVAYYA.

83. *Suits against Government.*—It is an attribute of sovereignty, and an universal law* that a State cannot be sued in its own courts without its consent. In British India, the case is different. The St. 21 and 22 Vict. C. 106 which transferred to the Crown the possession and Government of British territories in India, expressly provided for a continuance of the liabilities with which the revenues of India in the Company's hand were chargeable. †The Secretary of State can be sued in respect of matters on which the East India Company could be sued, and even then not in respect of acts of State or acts of sovereignty done by the Company.

*I Calcutta II.
V Madras 277.

40. India App. 48
27. Bombay, 189.
28. Bombay, 214.
39. Madras, 781.
38. Calcutta, 797, etc.

84. The case here is different. In respect of matters, where a right of suit by an individual is indicated as in certain sections of the Land Revenue Code in force in Mysore, some procedure may have to be laid down. On other matters, it is the pleasure of His Highness and the Government. It may involve passing of other provisions regarding indemnity for public acts done *bona fide* by a public servant.

85. Several States in India have recognised this right, *i.e.*, Hyderabad, Baroda, Travancore, Cochin and Indore. In the last three States, the Civil Procedure Code lays down the procedure and Civil Courts have cognizance. There does not appear to be any restriction regarding the class of suits to be so tried or regarding any permission to be obtained before suing. In Baroda, certain classes of cases are exempted and right of suit regarding others is allowed. In Hyderabad there is a Special Act relating to such suits, which require previous sanction of the Minister or the Nizam, and which are triable only in a Special Tribunal.

86. In England a restricted right of suit is allowed by what is known as a Petition of Right '. Previous permission known as ' Fiat ' is necessary and is granted only in a limited class of cases. In the United States of America, there is a special ' Court of Claims ', requiring permission before hand. France also has a Special Court, while in Germany, ordinary Civil Courts have jurisdiction. In all places, however, the right of suit is restricted.

87. In Mysore, we have passed the stage when the remedy as now provided, regarding suit against Public Servants, afforded a sufficient remedy to a wronged individual. Government as a corporate body is now entering into contractual relations and is running Railways and other business concerns. At present there appears to be no remedy open to parties contracting with the Government or complaining of a Breach of Contract or for damages in suitable cases.

88. It may be necessary to detail, as in Baroda, the classes of cases, in which a suit is allowed or those in which no action will be entertained. The better method will be to pass a Regulation as in Hyderabad, regarding the substantive portion, and amending the Civil Procedure Code, regarding the procedure to be adopted, *e.g.*, record of appearances, service of summons, mode of execution, etc. Or, the Regulation may itself contain all these provisions. If the class of cases is restricted, no necessity will arise for previous permission, which is an alternative, in case, it is deemed difficult to classify the cases. A Special Tribunal is desirable as questions may arise, which it may not be advisable to leave to ordinary courts to decide.

89. Right may perhaps be given in the following cases, subject to any remedies already existing :—

(1) Contracts express or implied.

(2) Breach of Contracts and Damages.

(3) Mixed contracts and torts where it is doubtful under which category a case falls.

(4) Very restricted in certain cases of torts, though it is against the general principle adopted in other countries, *viz.*, damages for injuries, in Railways run by Government. This is allowed elsewhere also.

(5) Claims founded upon the constitution or any law in force.

(6) Any departmental cases, after the party has exhausted all departmental remedies.

90. Due provision will have to be made for indemnity for acts done by Judicial officers, and also executive officers, when done as such officers.

91. Reservation by Government of Power to frame rules, etc., is also necessary.

92. Ordered by the Member to prepare a list of cases, where right of Suit may lie and where it may not.

93. Draft list prepared. After discussion with the General Secretary, was instructed to put it in the form of a bill, and to submit it.

C. ABDUL GHANI.

94. A bill is prepared as directed, embodying the substantive law only. Regarding the procedure to be adopted, it is more appropriate to amend the Civil Procedure Code, as Part IV already deals with the subject. It does not appear advisable to include the procedure also in the bill itself. Hence, another bill amending the Civil Procedure Code is also put up.

C. ABDUL GHANI,
15-2-1922.

95. A revised draft is put up, according to instructions.

C. ABDUL GHANI,
20-2-1922.

96. Several alterations are suggested by the General Secretary and are marked. Please prepare a clean copy.

C. ABDUL GHANI,
22-2-1922.

97. A revised copy is submitted.

C. ABDUL GHANI,
22-2-1922.

98. Drafts of two Bills:– One providing for suits against Government and the other to carry out consequential changes in the C. P. C. are submitted for consideration. The former has been drafted alternatively that is one giving a positive enumeration of the causes of action on which a Suit against Government can be founded and the other defining negatively cases when such Suit will not lie. I am personally in favour of the latter procedure.

99. Perhaps it may be advantageous to consult the Government Advocate.

S. HIRIANNAIYA,
23-2-1922.

100. Yes. The Government Advocate may be consulted. He may be asked to go through the drafts and revise them, if necessary.

MIR HAMZA HUSSEIN,
27-2-1922.

101. Forwarded with compliments to the Government Advocate for favour of opinion.

S. HIRIANNAIYA,
28-2-1922.

102. At present there is no provision of law in Mysore which enables a subject of the State to file suits against Government. If there is a cause of action against Government, the aggrieved party has to file a suit only against the Officer directly concerned and though, in cases where the Officer is sued in his official capacity, it is usual for the Government to undertake the defence, it is yet a purely optional matter.

103. It is a well recognised principle that a State cannot be sued in its own courts except with its consent and this consent can be expressed only by a specific enactment permitting or conceding such a right.

104. There are certain Regulations which provide for suits against Government in some cases but there is no provision of a general nature recognizing such a right.

105. In England. this right is exercised by means of what is known as a Petition of Right under 23 and 24 Victoria, Chapter 34 and a very elaborate procedure is laid down under that enactment. This procedure cannot be adopted in our State as our system of Judicial Administration is altogether different and the machinery available therefor is also very limited.

106. Nor can we adopt the system obtaining in British India, as there, the Government has practically stepped into the shoes of the East India Company and all such suits as could have been maintained against that Company, can now be maintained against the Secretary of State for India, as provided in Section 65 of 21 and 22 Victoria, Chapter 106. The scope there is therefore naturally much larger than can be conceded here, the position in our State being much the same as in England. But at the same time, in view of the fact that the laws in force here are usually modelled on the lines of those in force in British India, the rights conceded or granted here must be as far as possible, like those enjoyed by the people in British India.

107. A beginning may therefore be made here by granting the subjects a right of suit in certain obvious cases embodying for the present, in the proposed enactment, a list of cases in which suits could be instituted, reserving to Government the right to add to or subtract from that list—in the light of the experience that may be gained by the actual working of the system.

108. Of the two alternative drafts now proposed, I am in favour of the one defining affirmatively those cases in which a right of suit is recognised or conceded, rather than of the other conceding the right generally but excluding certain classes of cases in which suits shall not lie, as the latter course is likely to give rise to a lot of speculative litigation, leading to very much loss of public time and of money to both the subjects and the Government.

109. The circumstance that the right will for the present be limited to only a few cases—need not—necessarily lead to any apprehension, because, it is always open to Government, even as the Law stands at present, to undertake the defence in suits filed against its officers and to pay the amounts decreed against such officers where the Government feels it just and necessary to do so.

Alternative Draft No. 2.

" A Bill to provide for suits against Government."

Instead of the present Clause (*c*) to sub-section (1) of Sction (2) I would propose :—

" Claims in contracts express or implied, including damages for breach of Contract."

110. This will make the provision more general and comprehensive, besides covering all the cases now proposed under Sub-Clauses (i), (ii) and (iii).

111. I would also propose the omission of Clause (*d*) as it is very indefinite. Further, once the word " torts " is put in, it will lead to endless complications, as a cause of action based purely on tort can easily be twisted into one of mixed contract and tort. It has also to be remembered that a claim in tort is not recognized even in British India, unless the cause of action arises in consequence of any act done under the orders of Government or subsequently ratified by Government.

Draft No. 1.

" A Bill to provide for suits against Government."

Clauses (*b*) and (*g*) of sub-section (1) of Section 3, may be omitted. The former is superfluous, besides being vague and indefinite. In several cases whether a claim is tenable in law or equity at all may not be very clear at the outset and this question will have to be decided by the Court as one of the main issues in the case.

112. As regards the latter clause, one has to admit that questions relating to the validity of orders of Government do arise in several cases—at least incidentally and such questions will have to be gone into and decided. If it is intended to exclude suits brought merely for a declaration that an order is illegal—without any consequential relief—then it is quite open to the Court to decline to grant such relief under Section.... of the Specific Relief Act. I do not, therefore, consider that it would be expedient or fair to exclude such a right.

" Bill further to amend the Civil Procedure Code."

" In Section 3, under " 79-A ", the word " Shall " may be substituted for the word " Can ", and the word " territorial " may be omitted. The place of suing has to be determined with reference to the provisions of Sections 16, 17, 18, of the Code and the use of the word " territorial " is likely to create a little confusion.

113. 79 B appears to be unnecessary. Rule 1 of Order 27 if suitably modified, so as to bring it in conformity with the British Indian Code, will quite secure this object, as in every case some officer will have to be generally or specially appointed to act on behalf of Government, having regard to the peculiar circumstances of the case.

114. The Government Advocate or such other legal advisor as may be engaged by the Government will of course have to appear on behalf of Government ; but he cannot sign and verify plaints or written statements as this will have to be done by officers of the particular departments concerned who may have a special knowledge of the facts and circumstances of the case in question. Provision for both purposes already exists to some extent in Order 27, Rules 1 and 2, which, if suitably amended so as to bring them in conformity with the corresponding provisions of the British Indian Code, will quite serve the purpose. There is also likely to be some overlapping if " 79-A " is added.

115. Instead of Section 4 (2), we might perhaps substitute 4 (2). For the words " been delivered to him " in the same Section the following words shall be substituted; namely :—

" been, in the case of Government, delivered to or left at the Office of the Chief Secretary to Government, and, in the case of a Public Officer, delivered to him."

116. This form will bring in the commas at the appropriate places and make the form much more simple.

117. " 80-A " may also be omitted and the corresponding provision in force in British India, *viz.*, Order No. 27, Rule 5, may be retained instead, of course, with consequential amendments.

118. Order 27 of the Code will also have to be amended both with respect to the heading and the rules therein. Our present Rules 1 and 3 will have to be amended by adding words such as " or against " " or written statement " " or defendant " etc., and by inserting the words " the Government " for " the Secretary of State for India in Council " at the appropriate places.

119. In our Code Rules 4,5 and 6 of Order 27 which exist in the British Code are omitted, because, when our Code was introduced, there was no right of suit against the Government. Now, therefore, those rules also will have to be introduced in Order 27 with the usual modifications.

120. These amendments and additions will obviate the necessity for introducing the proposed new Sections " 79-B " and " 80-A."

121. In my opinion the amendment of Order 27 with the addition of the Rules now omitted would be more appropriate than the introduction of new Sections to the Code.

K. SHANKARANARAYANA RAO,
Government Advocate.
11-5-22.

122. Please put up a typed copy of a Bill as revised and approved by the Government Advocate, early. Also of all other amendments suggested by him.

S. HIRIANNAIYA,
17-5-22.

123. Submitted with typed copies of the Bills as revised by the Government Advocate.

S. G.
18-5-1922.

124. The amendments proposed by the Government Advocate in Order XXVII, are not shown here, because, they need not be placed before the Legislative Council. The necessary alterations and additions will be made and issued by a notification.

Submitted as directed by the General Secretary.

C. ABDUL GHANI,
22-5-1922.

125. *Draft 2 may be adopted—Section 2 (1) (a). For recovery of lands, goods or money that has passed into possession of Government, seems to be too wide—I would like to know what class of cases are intended to be brought under this clause.*

126. *Section 79 (a). The section as it is worded now will lead to difficulties. Supposing the value of the suit is within the jurisdiction of the Munsiff or Sub-Judge, can it be said that it is a suit over which the District Judge has jurisdiction? I would like to have a section similar to section 229 of the Revenue Code.*

127. *I would like to discuss the bill with the Government Advocate. Please ask him to meet me in my Chambers on Saturday at about 11-30 A.M. and I shall be much obliged if the General Secretary and Assistant Secretary be also present.*

128. *Please send a copy of the approved draft bill to Mr. Ramachandra Rao for favour of his opinion and suggestions at an early date.*

129. *Please see Regulation II of 1892. Is a suit against the Government maintainable— Supposing that the Government is carrying on mining operations will a suit for*

injury caused by neglect or default by the officer in charge be maintainable under the proposed bill? If it is not, the bill will not give satisfaction to the public.

MIR HAMZA HUSSEIN,
25-5-1922.

130. I have written to Mr. Shankaranarain Rau. Please prepare a copy of the bill and address it to Mr. M. Ramachandra Rao as required.

C. ABDUL GHANI,
25-5-1922.

131. A copy of the Bill has been made.
Submitted with a draft of a letter to Mr. Ramachandra Rao.

S. G.
25-5-1922.

132. Issue.

C. ABDUL GHANI,
26-5-1922.

133. *The draft has been revised after further consultation with the Government Advocate and the Chief Secretary.*

134. *Please submit to the Dewan. Will have to be considered in Council with his approval.*

MIR HAMZA HUSSEIN,
13-9-1922.

135. May be disposed of by circulation very early. This may be announced at Dasarah.

A. R. BANERJI,
14-9-1922.

Final Note by the Second Member of Council.

136. There is now no provision of law under which a subject of the State can file a suit against the Government for any relief for which a suit would ordinarily lie against a private person, except in cases explicitly provided for in some of the Regulations such as the Land Revenue Code and the Land Acquisition Regulation. If there is a cause of action against Government, the aggrieved party has, under the present Civil Procedure Code, to file a suit against the individual Officer concerned in respect of an act purporting to be done by such officer in his official capacity. In such cases Government usually undertake the defence and the damages if any awarded are paid from public revenues. But it is not obligatory upon the Government to do so. The aggrieved party has thus no certainty of obtaining relief in the due course of law and representations have therefore been frequently made both in the Representative Assembly and in the Legislative Council for the recognition of the right to sue the Government directly. A Resolution was also moved on the subject in the Legislative Council and it was unanimously supported by the non-official Members.

137. In British India a subject has all the remedies against the Secretary of State in Council which were open to him against the East India Company before the Government of India was taken over by the Crown. In England though theoretically a subject has no right to sue the Crown yet it is allowed indirectly by way of petition of right.

138. The principle underlying this Bill is that while the State is not suable in its own courts in respect of the administrative acts of Government, the immunity should not extend to other activities which are not peculiarly the function of the State. The activities of Government have considerably expanded in recent years and the Government have been running even commercial concerns, which bring them into business relationship with private persons. The question was also pointedly raised both in the public press and by enquiries addressed to Government as to what means were open to the subscribers to the public loans recently raised by Government to enforce the terms of the loans.

139. After a careful consideration of the matter it is considered expedient to concede the right of suit against Government for certain specified reliefs. Two Bills—one for amending the Code of Civil Procedure and another defining the classes of cases in which such suits might be instituted—have been prepared and are herewith submitted. I may add that the reliefs for which the institution of suits against Government is proposed to be allowed are selected from the list of cases in which suits against the Crown by way of the petition of right are permitted in England.

140. The Bills have been passed by the Dewan and the other Members of Council and may be graciously approved.

MIR HAMZA HUSSEIN,
Member of Council,
29th September 1922.

Submitted to His Highness.

141. I submit herewith a Final Note by the Second Member of Council on the subject of Bills to provide for Suits against Government, for His Highness' gracious approval.

A. R. BANERJI,
Dewan,
24-9-1922.

142. Order.
K. R. W.
6-10-1922.

143. This file should be put up very early with the notes of the discussions at the recent Representative Assembly.

K. MATTHAN,
13-10-1922.

144. Discussion in the Representative Assembly, is herewith put up. The gist of the discussion is as follows :—

(1) Power to be retained to add to the list.
(2) Suits for Injunctions to be provided for.
(3) Remedy to be provided for damages for Departmental negligence.
(4) Judical Officers' Protection Regulation to be repealed.

145. The other matters relate to amendment of Land Revenue Code, Irrigation Bill, etc., and are beyond the scope of the present bill.

C. ABDUL GHANI,
23-10-1922.

146. Submitted for further orders.

K. MATTHAN,
25-10-1922.

147. *No. I. May be dealt with in the Select Committee stage.*
148. *No. II. Has been replied to. The specific act is to be amended for that purpose.*
149. *No. III. The mover promised to send the authority for this proposition. But has not done so. The suggestion cannot be accepted.*
150. *No. IV. This is a different matter altogether and has nothing to do with this bill.*
151. *The present bill requires no modifications at present.*

MIR HAMZA HUSSEIN,
26-10-1922.

152. May be included in the Agenda for the next meeting.

C. ABDUL GHANI,
26-10-1922.

153. Submitted with two drafts of statement of objects and reasons for the Bills. They have to be approved in Council and the permission of His Highness has perhaps to be obtained for placing Bills before the Legislative Council.

A. S. R.,
28-10-1922.

154. Approved.
155. Please type and put up.

C. ABDUL GHANI,
30-10-1922.

156. Submitted with a typed copy.
S. G.
2-11-1922.
A. S. R.
3-11-1922.

157. For approval.

C. ABDUL GHANI,
4-11-1922.
B. VENKOBA RAO,
6-11-1922.

158. *Statement of objects and reasons, approved.*
159. *Yes. Please submit to the Dewan.*

MIR HAMZA HUSSEIN,
12-11-1922.

160 The objects and reasons have to be very brief. Past experience shows that no opening for attack shoud be given in this part of the draft. I have therefore abridged it.

A. R. BANERJI,
14-11-1922.

161. May be disposed of by circulation

A. R. BANERJI,
14-11-1922.

162. For perusal of Dewan's minute before transfer of file to Council Section.

B. VENKOBA RAO,
14-11-1922.
MIR HAMZA HUSSEIN.

163. Circulate.

K. MATTHAN,
16-11-1922.

164. Seen. No remarks.

P. RAGHAVENDRA RAO,
20-11-1922.

165. Secretary, Legislative Council—Second Member's order. Dewan's permission may have to be taken for introduction into Legislative Council. Do needful.

B. VENKOBA RAO,
25-11-1922.

166. Drafts publishing under rule 32 are put up.
S. G.
25-11-1922.

167. The Second Member was pleased to order this morning, that since the Bills in question were placed before the Representative Assembly, there is no necessity to take the formal leave of the Legislative Council for the introduction of the Bills, and that they may be published under Rule 32 of the Rules of Business of the Legislative Council, with the permission of the Dewan.

168. Draft Notifications are put up for orders.

A. S. R.
25-11-1922.

169. The last date for the publication of the Bill in the Gazette is 30th of the current month.

J. APPAJI GOWDA,

25-11-1922.

170. Draft notifications approved. I suppose these have to be submitted to His Highness.

A. R. BANERJI,
27-11-1922.

171. Submitted. May the draft notifications issue ?

A. S. R.
27-11-1922.

172. Yes. But note on the other point raised by the Dewan.

J. APPAJI GOWDA,
27-11-1922.

173. Issue and resubmit to-day.

J. APPAJI GOWDA,
28-11-1922.

174. Re-submitted after issue. The file with the Bills have been submitted to His Highness and approved by him on the 6th October 1922. But the statements of objects and reasons were put up afterwards.

175. In the Bill providing for suits against Government the Dewan has made some alterations. It is presumed that it is intended to delete only the word "culpable."

S. G.
28-11-1922.

176. This word is omitted in the Press Copy and the word 'negligence' retained.

A. S. R.
28-11-1922.

177. Kind reference is invited to the minute of the Dewan, dated 27th November 1922. As the Bills have received the approval of His Highness, it is a point for orders, whether they have to be submitted again. The only new addition is the statement of objects and reasons.

J. APPAJI GOWDA,
28-11-1922.

178. Not necessary. 'Culpable negligence' is scored out.

A. R. BANERJI,
29-11-1922.

179. Please score out 'negligence' also in the proof copy.

J. APPAJI GOWDA,
29-11-1922.

180. Submitted. All the three words 'by culpable negligence' will have to go. If approved, these words will be omitted.

A. S. R.
29-11-1922.

181. Yes.

J. APPAJI GOWDA.

182. Corrected accordingly. The file may perhaps be submittted to Second Member for perusal of Dewan's orders.

S. G.
29-11-1922.
A. S. R.
29-11-1922.

183. Submitted for perusal.

J. APPAJI GOWDA,
29-11-1922.

184. Copies of the Bills have been received. Submitted with a draft forwarding the same to the Residency.

S. G.
6-12-1922.
A. S. R.
6-12-1922.

185. Issue.

D. C. SUBBARAYAPPA,
6-12-1922.

1. *No. Pol.* 509, *dated 7th December* 1922, *to the Secretary to the Resident, forwards copies of Bills to provide for suits against Government and to amend the C. P. C.*

2. *No.* 9810, *dated 13th December* 1922, *from the Secretary to the Resident, states that the Resident sees no* prima facie *objection to the introduction of the Bills in the Legislative Council.*

186. Submitted with Mr. H. Krishna Rao's letter giving notice of an amendment to sub-clause (*f*) of clause 2 of the Bill to provide for suits against Government. Due notice has been given and if approved it will be included in the agenda.

S. G.
5-4-1923.
A. S. R.
5-4-1923.

187. This has to be included in the Agenda, according to rules.

188. The point was considered by the committee, and the words "or managed" were dropped, as the scope of the section would be very wide then.

C. ABDUL GHANI,
5-4-1923.

189. The Select Committee report has been agreed to in the Legislative Council on the 16th instant, the amendment of Mr. Krishna Rao having been lost.

190. Submitted with a draft to the Residency for obtaining the sanction of the Government of India.

S. G.
18-4-1923.
A. S. R.
19-4-1923.

191. I am not sure if sanction is necessary in the case of one Bill, *viz.*, suits against Government. Anyway the draft may issue.

C. ABDUL GHANI,
20-4-1923.

3. *No. Pol.* 997, *dated 1st May* 1923, *to the Secretary to Resident, forwards copies of the Bill and applies for Government of India sanction.*

4. *No.* 4044, *dated 14th June* 1923, *from the Secretary to Resident, intimates that the Governor-General in Council accords his consent to the Bills.*

192. Submitted. The Bills will be included in the Agenda for the next meeting for being passed.

S. G.
15-6-1923.
A. S. R.
15-6-1923.

193. Yes.

C. ABDUL GHANI,
15-6-1923.

194. Yes.

MIR HAMZA HUSSEIN.
18-6-1923.

195. Seen.

A. R. BANERJI,
20-6-1923.

196. The Bills were published under rule 32 and read and referred to a Select Committee at the meeting on the 18th December 1922. The Select Committee report was considered and accepted on the 16th April 1923 and the Bills finally passed on the 29th June 1923.

197. Submitted with a D. F. N. for promulgating the Bills into law.

S. G.
3-7-1923.
A. S. R.
5-7-1923.

198. Please bring up.

C. ABDUL GHANI,
5-7-1923.

199. The D. F. N. has been altered suitably as directed. It will be got typed after approval.

S. G.
6-7-1923.
A. S. R.
6-7-1923.

200. May be typed now.

C. ABDUL GHANI,
6-7-1923.

201. Submitted with a typed draft.

S. G.
7-7-1923.
A. S. R.
7-7-1923.

202. *Approved.*

MIR HAMZA HUSSEIN,
8-7-1923.

Final Note by the First Member of Council.

203. On the 6th October 1922, His Highness was graciously pleased to approve of the Bill to provide for Suits against Government and the Bill to amend the Code of Civil Procedure introducing certain consequential changes. As the Bills had once been discussed in the Representative Assembly, it was considered unnecessary to ask for leave to introduce the Bills into the Legislative Council and they were published, with the Dewan's permission, under rule 32 of the Rules of Business of the Legislative Council. The Bills were read and referred to a single Select Committee at the meeting of the Legislative Council held on the 18th December 1922. The Select Committee's reports were considered and accepted on the 16th April 1923. The sanction of the Government of India having been obtained, both the Bills were finally passed at the meeting of the Legislative Council held on the 29th June 1923.

204. His Highness' gracious sanction is now solicited for promulgating both the Bills into Law.

MIR HAMZA HUSSEIN,
Member of Council,
9th July 1923.

Submitted to His Highness.

205. I submit herewith a Final Note by the Officiating First Member of Council on the subject of promulgation into law of the Bill to provide for suits against Government and the Bill to amend the Code of Civil Procedure, for His Highness' gracious approval.

A. R. BANERJI,
Dewan,
11th July 1923.

206. Sanctioned by His Highness.

T. THAMBU CHETTY,
18-7-1923.

207. Submitted with draft orders promulgating the Bills into laws.

S. G.
7-8-1923.

208. Issue.

C. ABDUL GHANI,
8-8-1923.

G. O. No. P. 818, *dated* 10*th August* 1923, *to the Compiler, Mysore Gazette.*

Ordering that the Regulation to provide for suits against Government which received the assent of His Highness the Maharaja, on the 18th July 1923, be published as Regulation No. VII of 1923.

G. O. No. P. 819, *dated* 10*th August* 1923, *to the Compiler, Mysore Gazette.*

Ordering that the Regulation to amend the Code of Civil Procedure which received the assent of His Highness the Maharaja, on the 18th July 1923, be published as Regulation No. VIII of 1923.

No. J. 236, *dated* 21*st July* 1917, *to the Registrar, Chief Court.*

I am directed to request you to be so good as to forward, for the information of Government a copy of the Judgment of the Chief Court in the recent Mysore Land Acquisition case, brought by Mr. M. Murthi Rao, against the District Judge, Mysore.

No. Pol. 72, *dated* 21*st July* 1917, *to the First Assistant to the Resident in Mysore.*

In connection with a proposal made in the Representative Assembly for amending the Civil Procedure Code of Mysore, so as to allow suits being filed against Government, I am directed to request you to be so good as to ascertain, for the Durbar, the practice obtaining in the matter in the Native States noted in the margin.

Hyderabad
Baroda
Travancore
Indore
Cochin

D. Dis. No. 79, *dated* 28*th and* 31*st July* 1917, *from the Registrar of the Chief Court of Mysore to the Secretary to the Government of Mysore, General Department.*

As desired in your letter No. J. 236—Cts. 49-14-1, dated the 21st instant, I am directed to forward herewith a copy of Judgment of this Court in Regular Appeal No. 230 of 1915-16, preferred against the decree of the District Judge of Mysore (Mr. Mir Hamza Hussein) in Original Suit No. 10 of 1914-15, the Mysore Land Acquisition Case.

IN THE CHIEF COURT OF MYSORE AT BANGALORE.

Wednesday, the 21*st day of March* 1917.

PRESENT.

Sir Leslie C. Miller, KT., Chief Judge and Mr. Justice T. Paramasiva Iyer.

Regular Appeal No. 230 *of* 1915-16.

Mr. M. Murthy Rao .. .. *Plaintiff.* (*Appellant.*)

(By Messrs. H. Narasinga Rao and C. Seshachar).

vs.

1. The Secretary to the Government of Mysore, General and Revenue Departments.
2. A. Subramanya Iyer, Esq., Deputy Commissioner, Mysore District.

Defendants. (*Respondents*).

(By Mr. C. S. Doraswamy Iyer, the Government Advocate for the Government).

Regular appeal against the Decree of the District Judge of Mysore (Mr. Mir Hamza Hussein) in O. S. No. 10 of 1914-15.

This appeal coming on for hearing on Friday and Wednesday, the 2nd and 7th of March 1917, the court delivered the following

JUDGMENT.

The Chief Judge.—This appeal arises out of the proposed acquisition of certain land in Mysore under the Land Acquisition Regulation.

The suit is for a declaration that the order of Government authorizing the Deputy Commissioner to take action for the acquisition is contrary to the Regulation and of no effect and for an injunction restraining the Deputy Commissioner from taking possession of the land.

The first defendant is the Secretary to Government in the General and Revenue Departments and the second is Mr. A. Subramanya Aiyar, Deputy Commissioner of Mysore.

The suit has been thrown out on the ground that it is a suit against the Government and that in Mysore, suits do not lie against the Government.

The question thus determined was not raised in the written statement of the defendants but appears to have been raised before the first hearing and the District Judge framed three issues to deal with it.

It will be seen that the suit is not in form a suit against the Government and the written statement did not raise the question whether it would not lie against the defendants.

The District Judge would in my opinion have done better to try it on the pleadings or to have had them amended : if he found that the reliefs claimed could be given only in a suit to which the Government is a party he could have thrown out the suit for want of a cause of action against the defendants : if there is a cause of action against the defendants, it was unnecessary to make the Government a party unless the relief asked for could not otherwise be given.

It seems clear that no suit will lie against the Secretary to Government for signing the declaration under section 6 of the Regulation : he signs as an officer empowered to certify the orders of the Government and the declaration is made under section 6 by the Government. The Secretary is responsible at most for the publication of the notice and if the notice is not libellous I do not see how any cause of action can arise against him personally or in his official capacity as Secretary. That however is not the principal question.

There are observations in XVIII Mysore C.C.R. 92 and in XII M.L.R. 145 to the effect that a suit does not lie against the Government of Mysore and we are asked to reconsider that position.

The fact that the Civil Procedure Code makes no provision for suits against the Government and so far as we have been able to ascertain, never has made any provision for such suits in Mysore is evidence that suits against the Government were not contemplated but is not conclusive. Mr. Narasinga Rao however did not show us any case in which a suit against the Government has been successfully prosecuted. Nevertheless suits against the Government are recognized by the Land Revenue Code—sections 221. 222, 225, 230—and provision is made in article 17 of the schedule of the Limitation Regulation for a suit against Government for compensation for land acquired for public purposes. The latter provision no doubt does not confer a right of action, but it suggests the existence of that right, and the provisions of section 222 (*a*) of the Land Revenue Code very clearly declare the right of suit against the Government in the matters to which that section refers.

It is very difficult therefore to say that in Mysore a right of suit against the Government is unknown.

Mr. Narasinga Rao relied also on section 3 (16) of the General Clauses Regulation of 1899 where the Government is defined as the person authorized to administer executive Government in Mysore. On this definition he based his proposition that 'the Government' in Mysore is not synonymous with 'the State,' the 'sovereign power,' 'the Crown', but is simply a public officer. Assuming that, the case is not really carried much farther because the definition alone will not give a suit against a public officer *as such* : as representing the Government. Suits do not lie against public officers as such when they are not allowed against the Sovereign. The officer being the agent of the Sovereign cannot be sued as such when his principal is not liable (Raleigh *V.* Goschen (1898) I Ch. D. at page 78) : he may of course be sued in respect of his own acts purporting to be done in his official capacity but that is obviously a different thing.

At most if the argument has any force, it would allow of a suit against the members of the Government but that would not help the plaintiff to reach the public treasury as of right.

The definition in section 3 (16) of the General Clauses Regulation will not apply to the Land Revenue Code which was enacted before it, nor to article 16 of the Limitation Regulation where the 'Government' is clearly the 'Government' of section 222 (*a*) of the Land Revenue Code. Nor will it necessarily apply to article 17 or 18 because there the Government is evidently a body capable of paying compensation out of the public funds. The application of section 3 (16) might in these cases be excluded by repugnancy of the subject.

The argument from section 3 (16) of the General Clauses Regulation does not therefore impress me very much: but seeing that the law does contemplate some suits against the Government, reading that expression as equivalent to 'the State' or 'the Crown,' it would seem desirable that the Legislature should provide some procedure for use in those suits.

The fact however that certain Regulations provide for suits against the Crown does not go far to show that suits will lie apart from statutory provisions and while on the one hand I cannot accept the argument that the jurisdiction conferred by the proviso to section 221 and by section 222 of the Land Revenue Code was given more or less by inadvertence in introducing the Bombay Code into Mysore, I cannot on the other hand accept the existence of that jurisdiction as proving that in Mysore all claims of a civil nature can be advanced against the State by way of ordinary suit, except such as are barred by enactment.

Mr. Narasinga Rao did not refer us to any authority historical or other showing that the common law of Mysore permits claims to be so advanced, and I prefer not to pronounce an opinion in this case, because it seems to me that apart from the liability of the State to be sued the plaintiff can get in the suit as framed the relief if any to which he may be entitled.

I have no doubt whatever that the courts can decide whether an act of the Government which purports to be done under the warrant of an enactment, is or is not warranted by that enactment and if it is not so warranted to declare that in a suit against the officer authorized to give effect to the illegal act. A public officer who acts illegally cannot protect himself by pleading the authority of the Government.

The District Judge considers that a declaration would be fruitless if it cannot be followed by an injunction. It is at least probable that the Government would with draw a notification declared by the courts to be illegal in a suit against a public officer, but I do not think the courts are powerless to issue an injunction in a proper case to restrain a public officer from committing an illegal act. There is no question of a mandamus against the Crown and I cannot see how section 56 (*d*) of the Specific Relief Act stands in the way. It cannot be one of the duties of any department of the Government to acquire land illegally under colour of the land acquisition regulation. The injunction would not prevent any legal action on the part of the Deputy Commissioner.

In the case of Raleigh *V.* Goschen (1898) I Ch. D. 73, Romer, J., lays down the principles applicable to cases like the present and assuming a suit against the Government of Mysore to be incompetent those principles which are of general application and do not depend on a particular constitution may serve to guide us here.

The Attorney-General in that case admitted that the court could inquire into the legal justification set up for an act alleged to be unlawful ; and the learned Judge held further that the plaintiffs in the case could sue any of the defendants individually for trespasses committed *or threatened* by them. The remedy for a threatened trespass is of course an injunction and an injunction was asked for in the case. No one suggested that to grant it would be to interfere with the duties of a public department provided it was granted against the defendants individually and not as a department of the Government.

It seems to me therefore that the District Judge is wrong in holding that an injunction cannot be issued in a proper case against the second defendant.

I have already expressed the opinion that there is no cause of action against the first defendant for signing the declaration. It is true that the officer, even if he be the head of a department, who authorizes or directs a trespass by a subordinate officer can be sued in respect of the trespass but it seems to be impossible to hold that the Secretary in this case is the person who authorized or directed the Deputy Commissioner to take possession of the plaintiff's land. The Secretary is not the Government of Mysore, and section 7 of the Regulation enacts that it is the Government or some

officer authorized by the Government from whom the authority of the Deputy Commissioner is to be derived. The Secretary is not alleged to have received authority to give directions to the Deputy Commissioner: he is merely the hand by which the authority of the Government is transmitted: His signature if it is found in the Government Order (it is not in the notification) is evidence that the authority has been given by the Government, and nothing more. He is not the head of a department of the Executive Government.

The suit as against the first defendant must in this view be dismissed; the District Judge does not give separate costs in favour of each defendant and it is unlikely that separate costs have been incurred. I would make no order in regard to the first defendant's costs.

For the disposal of the suit against the second defendant there do not seem to be more than two remaining questions (1) whether the courts are entitled to decide that the purpose stated in the notification is not a 'public purpose' within the meaning of the regulation and (2) if they are so entitled whether the purpose stated in the present case is a public purpose or not.

It is not alleged in the plaint that payment for the land is not to be made from the public revenues, and hence no question seems to arise under the proviso to section 6.

As Mr. Narasinga Rao desired to have the opinion of the District Judge on the questions arising though they seem to be questions of law only, the suit may be remanded for disposal, costs abiding the event.

(Sd.) LESLIE C. MILLER,
Chief Judge.

MR. *Justice* T. PARAMASIVA IYER.
I agree.

(Sd.) T. PARAMASIVA IYER,
Judge.

Memorandum of costs incurred in this appeal :—

	By the appellant (Plaintiff)	By the respondents (defendants)
	Rs. a. p.	Rs. a. p.
Court fee on memorandum of appeal	10 0 0	..
Do Power of Attorney	2 0 0	..
Do Processes	1 0 0	..
Do Copies of decree and judgment	1 8 0	..
Advocate's fee	100 0 0	100 0 0
Fees for copying	7 2 0	..
Cost of paper	0 0 6	..
Printing charges	8 13 8	..
Total ..	130 8 2	100 0 0

(Sd.) N. T. GOPALIENGAR,
Registrar.

Letter No. 2860—J., dated the 28th August 1917, from the First Assistant Resident, Hyderabad, to the First Assistant to the Resident in Mysore.

With reference to your letter No. 5898, dated the 6th August 1917, I am directed to forward, for transmission to the Mysore Durbar, an English translation of Act V, of 1320 Fasli, entitled an Act relating to suits against His Highness the Nizam's Government.

No. 6792—*En.* 1—*Bangalore, dated 3rd September* 1917, *from the First Assistant to the Resident.*

A copy of the foregoing letter, with enclosure, is forwarded to the Secretary to the Government of His Highness the Maharaja of Mysore, General Department, for information with reference to his letter No. Pol. 72, dated the 21st July 1917.

2. The replies of the other Durbars will be communicated when they are received.

No. 7067, *dated* 13*th September* 1917, *from the First Assistant to the Resident.*

A copy of the marginally* cited letter, with enclosures, is forwarded to the Secretary to the Government of His Highness the Maharaja of Mysore, General Department, in continuation of endorsement No. 6792, dated the 3rd September 1917.

*No. 2204-17, dated 2-9-1917 from the Resident in Travancore and Cochin.

No. 9549, *dated* 18*th December* 1917, *from the First Assistant to the Resident.*

A copy of the marginally* noted letter, with enclosure, is forwarded to the Chief Secretary to the Government of His Highness the Maharaja of Mysore, in continuation of endorsement from this office, No. 7067, dated the 13th September 1917.

*No. 12042, dated the 7th December 1917, from the First Assistant Resident at Baroda.

No. 435, *dated* 18*th January* 1918, *from the First Assistant to the Resident.*

A copy of the marginally*noted letter, with enclosures, is forwarded to the Chief Secretary to the Government of His Highness the Maharaja of Mysore, in continuation of endorsement from this office, No. 9549, dated the 18th December 1917.

*No. 68—B, dated the 11th January 1918, from the First Assistant to the Agent to the Governor-General in Central India.

No. J. 5502, *dated* 26*th May* 1922, *to M. Ramachandra Rao, Esq., B.A., B.L., Advocate and Member, Mysore Legislative Council.*

I am directed to forward herewith a copy of the Bill to provide for suits against Government and a Bill to amend the Civil Procedure Code, proposed to be introduced into the Legislative Council and to request you to be so good as to favour Government with your opinion on the said Bills. I shall be obliged, if you can kindly send your opinion before Monday the 29th instant. In the amending Bill to Civil Procedure Code, the portion relating to order XXVII is not included as it does not go before the Council.

D. O., dated 6th September 1922, *from the Government Advocate.*

With reference to your D. O. letter, dated the 29th ultimo, I beg to state that the draft Bill to amend the Code of Civil Procedure appears to be all right.

In regard to the other draft bill, relating to suits against Government, I am of opinion that the language of section 2 as now proposed does not appear to be quite suitable.

For example, the words "as a sole defendant or as a co-defendant" appear to be unnecessary. The words "subject to the same defences and rights of appeal, revision and review as if the Government of Mysore was suable in the Courts of the State" appear also to be superfluous, as once the right is conceded and the necessary amendment is made in the Code of Civil Procedure, all these things follow as a matter of course. The words "in the State" appear also to be unnecessary.

I would, therefore, modify section 2 of the present draft as follows :—

"2. Subject to the provisions of any existing law which bar a suit, a suit against Government will lie in the following cases :—

(*a*) For the recovery of land, goods or money in wrongful possession of Government or for compensation when restitution cannot be given.

(*b*) Claims on contracts, express or implied, including damages for breach of contract.

(*c*) For the recovery of duties paid by mistake or in excess.

(*d*) For rents and mesne profits.

(*e*) For the rectification or cancellation of any instrument.

(*f*) For compensation for injury to person or property caused by culpable negligence in any business concern managed by Government."

(Clause (*g*) of draft is put in as (*f*), clause (*f*) being omitted).

Section 3 is all right.

I am not in a position to see why clause (f) is put in, as I am not aware of any cases in which the Government has entered into partnership with any individuals or companies. If the provision is, however, considered necessary, clause (*f*) may be retained.

I have no other suggestions to offer. The draft Bills are enclosed.

Notification No. 424—L.C., dated 28th November 1922.

Under Rule 32 of the Rules for the conduct of business of the Mysore Legislative Council, the accompanying Bill to provide for suits against Government is published for general information with the statement of objects and reasons.

By Order,
J. APPAJI GOWDA,
Secretary.
Mysore Legislative Council.

A Bill to provide for Suits against Government.

Whereas it is expedient to provide for suits against Government, His Highness the Maharaja is pleased to enact as follows :—

1. (*i*) This Regulation may be called "A Regulation to provide for Suits against Government."

(*ii*) It shall extend to the whole of Mysore, and

(*iii*) It shall come into force on.....

2. A suit to which the Government of Mysore is a party as a defendant may be heard and determined by the Principal Civil Court of original jurisdiction having jurisdiction over the subject matter of the suit if the claim in respect of which the suit is brought is for any of the following reliefs :—

(*a*) for recovery of land, goods, or money in unlawful possession of Government or for compensation when restitution cannot be given ;
(*b*) for specific performance of contracts ;
(*c*) for damages for breach of contracts, express or implied ;
(*d*) for rents and mesne profits ;
(*e*) for the rectification or cancellation of any instrument ;
(*f*) for compensation for injury to person or property caused in any business concern managed by Government.

3. Notwithstanding anything contained in the Code of Civil Procedure, no Civil Court shall take cognisance of any suit against Government except in regard to matters expressly provided for in this Regulation or in any other enactment for the time being in force.

Statement of Objects and Reasons.

At present there is no provision of law which enables a subject of the State to file suits against Government, except in cases explicitly provided for in some of the Regulations such as the Land Revenue Code and the Land Acquisition Regulation. If there is a cause of action against Government, the aggrieved party has to file a suit only against the individual officer directly concerned in respect of the act purported to be done in his official capacity.

2. It is proposed now to concede the right of suit against Government for certain specified reliefs, in the accompanying draft Bill. These reliefs have been selected from the list of cases in which Government consider it equitable that the right to sue should now be conceded.

Notification No. 425—L.C., dated 28th November 1922.

Under Rule 32 of the Rules for the conduct of business of the Mysore Legislative Council, the accompanying Bill further to amend the Code of Civil Procedure, 1911, is published for general information with the statement of objects and reasons.

By Order,
J. APPAJI GOWDA,
Secretary,
Mysore Legislative Council.

Bill further to amend the Code of Civil Procedure 1911.

Whereas it is expedient further to amend the Code of Civil Procedure, 1911, His Highness the Maharaja is pleased to enact as follows :—

1. For the sub-heading of Part IV, the following sub-heading shall be substituted ; namely—

"Suits by or against the Government or Public Officers in their official capacity."

2. In Section 79 of the Code, the words "or against" shall be inserted between the words "by" and "the" in both the places.

3. (*i*) In Section 80 of the Code, between the words "against" and "a" occurring in the first line, the words "the Government, or" shall be inserted.

(*ii*) For the words "been delivered to him" in the same Section the following words shall be substituted, namely—

"been in the case of Government delivered to, or left at the Office of, the Chief Secretary to Government and in the case of a Public Officer, delivered to him."

4. In Section 82, between the words "against" and "a" the words "the Government, or" shall be inserted.

Statement of Objects and Reasons.

This Bill provides for certain alterations in the Code rendered necessary by the right of suits against Government being conceded in the Bill to provide for suits against Government.

No. 509—*Pol., dated 7th December* 1922, *to the Secretary to the Resident.*

I am directed to forward herewith a copy each of the Bill to provide for suits against Government and the Bill to amend the Civil Procedure Code and to state that the Bills have been published under rule 32 of the rules of business of the Legislative Council. The Bills will be read in Council at the next meeting of the Legislative Council.

No. 9810-40-1901, *dated 13th December* 1922, *from the Secretary to the Resident in Mysore.*

To the Secretary to the Government of Mysore, General Department.

The Resident sees no *prima facie* objection to the introduction of the above bills before the Legislative Council, as proposed. A reference to the Government of India is necessary, and a further communication will therefore, be awaited.

Notification No. 704—*L.C., dated 13th March* 1923.

Under Rule 40 of the Rules for the conduct of business of the Mysore Legislative Council, the following Report of the Select Committee on the Bill to provide for suits against Government and the Bill to amend the Civil Procedure Code is published for general information.

By Order,
J. APPAJI GOWDA,
Secretary,
Mysore Legislative Council.

Report of the Select Committee on the Bill to provide for suits against Government and the Bill to amend the Civil Procedure Code.

We, the undersigned members of the Select Committee to which the Bill to provide for suits against Government and the Bill to amend the Code of Civil Procedure had been referred, have the honor to submit this our report :—

Bill to provide for suits against Government.

Clause 1, *Sub-Clause* (iii).—We recommend that the Regulation may be brought into force soon after its promulgation. So, the words 'at once' are substituted for the word 'on' at the end of this sub-clause.

Clause 2, *Sub-Clause* (*a*).—We consider that the word 'wrongful' may be substituted for the word "unlawful."

Sub-Clause (*f*).—The sub-clause as at present worded is liable to the construction that the injured party may claim compensation for injury caused even in the ordinary course of the management of the concern. As it is not intended to make the position of Government worse than that of a private employer, we recommend that for the words "caused in any business concern managed by Government," the following words be substituted :—"due to wrongful act, neglect or default in the management of any industrial concern owned by Government."

Bill to amend the Code of Civil Procedure.

In clause 3 we consider that in order to make the meaning clear the word "against" should be repeated and hence we recommend that the word "against" be inserted after the words the "the Government or."

In sub-clause (ii) of the same clause we consider it necessary to insert commas after the words "been" and "Government" occurring in the first line.

In clause 4 also the word "against" has to be inserted after the words "the Government or."

We consider that as the amendments are only a few the Bills as amended by us need not be published and recommend that they be passed as thus amended.

Mir Hamza Hussein.
K. Matthan.
M. C. Rangiengar.
M. Ramachandra Rao.
B. N. Vijaya Deva.
H. Venkataramaiya.
G. Paramasiviah.
B. V. Ramaswamy Chetty.
K. Shankaranarayana Rao.

Note.—The approval of Mr. D. Venkatesaiya will be notified on receipt.

From Mr. H. Krishna Rao, L. C. Member, Camp Udipi (South Kanara), dated 3rd April 1923. *To the Secretary, Mysore Legislative Council, Bangalore.*

I have the honour to send herewith an amendment to the Civil Procedure Code, tabled for the discussion at the coming Legislative Council.

Amendments.

In the Bill to provide for suits against the Government and the Bill to amend the Civil Procedure Code, I beg to move the following :—

Sub-clause "*f*" add the words "or managed" behind the word "owned" and before the words "by Government."

The sentence as amended will run thus :—

"Due to wrongful act, neglect or default in the management of any industrial concern owned "or managed" by Government.

H. KRISHNA RAO,
3-4-1923.

No. 997—*Pol., dated* 1*st May* 1923, *to the Secretary to the Resident.*

With reference to your letter No. 9310, dated 13th December 1922, in the matter of Bills to provide for suits against Government and to amend the Code of Civil Procedure, I am directed to forward herewith two copies of the Bills together with copies of the Select Committee report thereon and to state that the report of the Select Committee has been accepted by the Legislative Council at its meeting on the 16th April 1923.

I am to request that the sanction of the Government of India may be kindly obtained to pass the Bills into law.

No. 4644, *dated* 14*th June* 1923, *from the Secretary to the Resident in Mysore.*

The Governor-General in Council is pleased to accord his consent to the Bills on the understanding that he retains over them the power and authority which vest in him by virtue of Article 18 of the Treaty, dated the 26th November 1913.

Proceedings of the Government of His Highness the Maharaja of Mysore.

Order No. P. 818, *dated* 10*th August* 1923, *to the Compiler, Mysore Gazette.*

Ordered that the accompanying Regulation to provide for suits against Government which received the assent of His Highness the Maharaja, on the eighteenth day of July 1923, be published as Regulation No. VII of 1923, in the *Mysore Gazette* for general information.

C. ABDUL GHANI,
For *Secretary to Government.*

REGULATION VII OF 1923.

A Regulation to provide for Suits against Government.

Whereas it is expedient to provide for suits against Government, His Highness the Maharaja is pleased to enact as follows :—

1. (*i*) This Regulation may be called "A Regulation to provide for suits against Government."

(*ii*) It shall extend to the whole of Mysore, and

(*iii*) It shall come into force at once.

2. A suit to which the Government of Mysore is a party as a defendant may be heard and determined by the Principal Civil Court of original jurisdiction having jurisdiction over the subject matter of the suit, if the claim in respect of which the suit is brought, is for any of the following reliefs :—

(*a*) for recovery of land, goods, or money in wrongful possession of Government or for compensation when restitution cannot be given ;
(*b*) for specific performance of contracts ;
(*c*) for damages for breach of contracts, express or implied ;
(*d*) for rents and mesne profits ;
(*e*) for the rectification or cancellation of any instrument ;
(*f*) for compensation for injury to person or property due to wrongful neglect or default in the management of any industrial concern owned by Government.

3. Notwithstanding anything contained in the Code of Civil Procedure, no Civil Court shall take cognisance of any suit against Government except in regard to matters expressly provided for in this Regulation or in any other enactment for the time being in force.

A. R. BANERJI,
Dewan.

Proceedings of the Government of His Highness the Maharaja of Mysore.

Order No. P. 819, *dated* 10*th August* 1923, *to the Compiler, Mysore Gazette.*

Ordered that the accompanying Regulation to amend the Code of Civil Procedure, which received the assent of His Highness the Maharaja on the eighteenth day of July 1923, be published as Regulation No. VIII of 1923, in the *Mysore Gazette* for general information.

C. ABDUL GHANI,
For *Secretary to Government.*